COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF OSWEGO: CRIMINAL TERM:

---------------------------------------x

THE PEOPLE OF THE STATE OF NEW YORK

Indict. No.
94C-0161

- against-

HEARING
VOLUME 1

GARY THIBODEAU,

Defendant.

---------------------------------------x

Oswego County Courthouse
25 E. Oneida Street
Oswego, NY 13126

DATE: January 12, 2015

Before:

HONORABLE DANIEL R. KING
Acting County Court Judge

Appearances:

GREGORY S. OAKES, ESQ.
District Attorney, Oswego County
MARK M. MOODY, ESQ.
Chief Assistant District Attorney

OFFICE OF THE FEDERAL PUBLIC DEFENDER
BY: LISA PEEBLES, ESQ., Public Defender
RANDI JUDA BIANCO, ESQ., Assistant Public Defender
Attorneys for Defendant

Defendant is present

INDEX TO WITNESSES

	Direct	Cross	Redirect	Recross
FOR THE DEFENDANT:				
Randi Juda Bianco	22	61	109	--
Hon. Joseph E. Fahey	119	--	--	--

INDEX TO EXHIBITS

	Identification	Evidence
FOR THE DEFENDANT:		
3. Omnibus motion	--	74
4. Post Standard article	--	71
5. Lortie report	--	113
6. Hearing transcript	--	68
7. Post Standard article	--	130
8. Montgomery report	--	31
9. VanPatten report	--	33
10. Anderson report	--	36
11. Kleist report (Defense)	--	38
11A. Kleist report (Prosecution)	--	42
12. Dodd file memo	--	131
13. Dodd letter to Fahey	--	133
17. Lead Sheet #977	--	135
35. Oakes letter to Bianco	--	52
85. Video tape	--	57
FOR THE PEOPLE:		
A. Decision	63	64

B.	Items of evidence	78	78
C.	Notice of motion	92	--
D.	Affidavit	93	--
E.	7/31/14 letter	97	--
F.	Report	97	--

FOR THE COURT:

1.	Waiver	9	--
2.	Proposed stipulations	11	--

09:26:02 THE COURT: This is Oswego County Court and I am Judge Dan King sitting as the Oswego County Judge. We are here on the 440 motion of Mr. Thibodeau who is represented by Ms. Peebles and Ms. Bianco from the Federal Public Defender's Office. Also present in the chambers or in the conference room is Mr. Oakes, the district attorney from Oswego County, and the chief assistant district attorney, Mr. Moody, along with Mr. Lyndaker who is my confidential attorney, and an officer from the State Corrections Department.

09:26:28 Mr. Thibodeau, we are here for a number of reasons this morning. We're going to start your hearing in a little while. As I have apologized to everybody else, I will also apologize to you for running late this morning, okay? First we're here because there were some exchanges between your attorney and Mr. Oakes regarding what Mr. Oakes perceived to be some possible past representation of a proposed witness, a Mr. Barney, that Mr. Oakes has a concern that Ms. Peebles may have a conflict. Mr. Oakes, please place on the record your understanding how Mrs. -- Ms. Peeble's, excuse me, purported prior representation of Mr. Barney.

09:27:03 MR. OAKES: Thank you very much, Your Honor. It's my understanding that Ms. Peebles previously

09:27:07 represented Mr. Barney on assault charge out of the Town of Palermo in 1996 and that matter was ACD'd, and that was discussed in August of 2014 through correspondence with the Court and counsel. More recently on January fourth I met with Mr. Barney at which time he had indicated that in addition to that representation, Ms. Peebles had represented him on a DEC matter where he was accused of illegally hunting deer. He had also indicated that she had represented him on a matter where he was seeking a certificate of relief of disabilities due to a felony conviction and that she had prepared that paperwork and I believe ultimately obtained that certificate for him. Additionally, at that point he had remembered or he thought he had remembered her representing him on a bankruptcy matter. Ms. Peebles clarified that no, she hadn't, and I spoke with Mr. Barney, and he said now that I think about it more, no, in fact she did not. Mr. Barney is --

09:28:08 THE COURT: In fact, an ADA from your office represented Mr. Barney on the bankruptcy, correct?

09:28:14 MR. OAKES: That -- that is correct. My last conversation with Mr. Barney he did indicate to me in fact just this last weekend he is adamant that Ms. Peebles had prepared paperwork for him on a 1983 civil

09:28:28 rights action against the New York State Police. I
09:28:31 asked him to think long and hard about it. He says I
09:28:34 was wrong in the bankruptcy, but I know she had
09:28:36 prepared the paperwork for that, and again, as we
09:28:39 discussed during our teleconference, I'm raising this
09:28:42 issue. I'm not trying to get Ms. Peebles excluded from
09:28:47 the case, that's not my intent. I just wanted to make
09:28:49 sure that everybody, all the parties have the relevant
09:28:52 information, and certainly at this point the People
09:28:55 intend to call Dan Barney as a witness, at least he's a
09:29:00 potential witness, so he has certain Sixth Amendment
09:29:03 rights issues that were implicated by Ms. Peebles'
09:29:06 prior representation, and I just wanted to make sure
09:29:07 that Mr. Thibodeau was aware of the prior
09:29:10 representation. It's the last thing I would want to do
09:29:14 is have an issue arise later where he was subsequently
09:29:17 learning of that representation.

09:29:18 THE COURT: When did the alleged DEC
09:29:20 representation take place?

09:29:22 MR. OAKES: In the late nineties, and again,
09:29:24 Mr. Barney's unsure when that took place.

09:29:27 THE COURT: How about the 1983 civil rights
09:29:30 action?

09:29:30 MR. OAKES: Late nineties to early two-
09:29:34 thousands. Again, I had asked him and he said he was

09:29:36 unsure of that. Again, his recollection is Ms. Peebles
09:29:41 had advised him at the time, and again, I'm not making
09:29:44 an accusation, but just relaying what was told to me
09:29:47 that Ms. Peebles informed him that she could not
09:29:50 officially prepare the paperwork for him and file it,
09:29:52 he didn't articulate why, or he said she didn't
09:29:56 articulate why, but again, his recollection is she had
09:29:59 prepared it for his signature on filing.

09:30:01 THE COURT: Okay, Ms. Peebles, your
09:30:02 recollection of your representation of Mr. Barney?

09:30:04 MS. PEEBLES: Yes. I recall representing Mr.
09:30:07 Barney in fact on the DEC violation. When they
09:30:10 provided me with the assault third disposition for the
09:30:13 ACD, I did not recall that. I recalled the DEC
09:30:17 violation. As far as a bankruptcy, I couldn't imagine
09:30:21 I represented him on a bankruptcy because I think I did
09:30:23 one bankruptcy petition in my whole private practice,
09:30:27 so I checked 'cause I didn't have a recollection, and
09:30:30 it was of course I discovered that I didn't, so then
09:30:33 the 1983 petition that he references does not sound
09:30:37 like anything I ever would have done, and if it was in
09:30:40 the two-thousands, it absolutely didn't happen because
09:30:42 I have been with this office since 1999, so it
09:30:46 absolutely would not have happened, and I don't have
09:30:48 any way to prove it other than if we looked to see when

09:30:51 he filed the 1983 petition, it would indicate what year
09:30:54 that was and I don't -- I don't know. So I have no
09:30:58 recollection of that whatsoever to be honest. I can
09:31:01 tell the Court this. Not long ago, maybe two years
09:31:04 ago, his attorney had contacted me to ask if I could
09:31:08 verify whether I was providing him with the original
09:31:12 certificate of relief from disabilities.

09:31:15 THE COURT: Okay.

09:31:16 MS. PEEBLES: And I said I couldn't because I
09:31:18 didn't remember it, and that was Dana Van Hee, and I
09:31:21 just wasn't willing to simply because I didn't have a
09:31:26 recollection of it, and that was before this even was
09:31:28 all pending, so that's my -- that's the sum total of
09:31:30 what I recall.

09:31:31 THE COURT: Mr. Thibodeau, you have heard what
09:31:33 Mr. Oakes has placed on the record as a means to
09:31:36 disclose what he believes you might perceive as a
09:31:39 conflict of interest in having Ms. Peebles, in essence,
09:31:43 may eliminate the entire office if you deem it to be a
09:31:47 conflict. Do you deem Ms. Peebles prior -- some prior
09:31:52 representation of Mr. Barney based on her disclosure
09:31:55 and what Mr. Oakes believes was a representation as a
09:31:58 conflict?

09:31:59 THE DEFENDANT: None whatsoever, Your Honor.

09:32:01 THE COURT: My understanding is you have

09:32:02 signed a waiver. I'm going to introduce what's been
09:32:04 marked as Court's Exhibit 1. You have -- probably have
nothing here to mark it with.

09:32:43 (Court's Exhibit No. 1 was marked for
09:32:46 identification).

09:32:46 THE COURT: Mr. Thibodeau, I'm going to have
09:32:46 Mr. Oakes hand to you a document which has been marked
09:32:49 Court's Exhibit 1. It's a purported waiver of
09:32:51 potential conflict of interest under Indictment No.
09:32:54 94-161. I'm going to ask that you look at that and I'm
09:32:58 going to ask you whose signature that is above the name
09:33:01 Gary A. Thibodeau, okay?

09:33:03 THE DEFENDANT: Yes, sir.

09:33:04 THE COURT: Please hand that to, Mr. Oakes.

09:33:05 MR. OAKES: Certainly, Your Honor. Here you
09:33:07 are, Mr. Thibodeau.

09:33:08 THE DEFENDANT: I recognize that as my
09:33:09 signature.

09:33:09 THE COURT: That is your signature on that
09:33:11 document?

09:33:11 THE DEFENDANT: Yes, sir.

09:33:12 THE COURT: So as you sit here today, you
09:33:13 acknowledge you signed the waiver of potential conflict
09:33:16 and you at this time don't see that Ms. Peebles has a
09:33:19 conflict in representing you.

09:33:20 THE DEFENDANT: None whatsoever, Your Honor.

09:33:22 THE COURT: Thank you, Mr. Thibodeau. I'll 09:33:24 keep that. Okay, I was also handed when I came in this 09:33:28 morning --

09:33:29 MS. PEEBLES: That's our exhibit list, Judge.

09:33:31 THE COURT: Your exhibit list.

09:33:32 MS. PEEBLES: Um hum. It's just provided for 09:33:34 courtesy to the Court and to the prosecutor.

09:33:36 THE COURT: I thought we were going to have 09:33:38 some stipulations.

09:33:39 MS. PEEBLES: We do.

09:33:39 MR. OAKES: We do, Your Honor.

09:33:40 THE COURT: Okay, let's put those on the 09:33:42 record.

09:33:42 MR. OAKES: Your Honor, here's a copy.

09:33:46 THE COURT: Thank you.

09:33:47 MR. OAKES: Your Honor, again, list our 09:34:01 proposed stipulations. Does the Court want me to 09:34:05 articulate each of those on the record or --

09:34:07 THE COURT: I don't believe it's necessary. 09:34:09 If it's all right with Ms. Peebles, I'll simply mark it 09:34:11 as Court's Exhibit 2.

09:34:13 MS. PEEBLES: That's fine, yep.

09:34:13 THE COURT: Would you mark the proposed 09:34:16 stipulation as Court's Exhibit 2 please?

09:34:16 (Court's Exhibit No. 2 was marked for
09:34:43 identification).

09:34:43 THE COURT: The Court now has marked as
09:34:45 Court's Exhibit 2 the proposed stipulation which number
09:34:47 one through twenty. Is that acknowledged by both
09:34:49 sides?

09:34:50 MS. PEEBLES: Yes.

09:34:51 THE COURT: Okay.

09:34:52 MR. OAKES: That is, Your Honor, yes.
09:34:55 Additionally, Your Honor, you'll see at the bottom of
09:34:56 the second page I made a note to be addressed the text
09:34:59 messages between Jennifer Wescott and Richard Murtaugh
09:35:02 as we discussed. I had looked through the records the
09:35:06 Sheriff's Department over the weekend. I don't see
09:35:09 photograph of that text message from Jennifer Wescott's
09:35:13 phone. I don't see it. Now I can acknowledge, and
09:35:19 again, I can talk with Ms. Peebles, I spoke with Mr.
09:35:22 Murtaugh last week and he did acknowledge receiving a
09:35:26 text message from Jennifer Wescott and that he had
09:35:29 responded who is this or words to that effect. And
09:35:34 again, I believe it may have been discussed with
09:35:36 Jennifer Wescott by Investigator Pietroski so Ms.
09:35:41 Peebles --

09:35:41 MS. PEEBLES: I guess the issue I have is she
09:35:43 was reading from her phone the text messages during the

09:35:46 interview, and he took her phone to examine it, and all
09:35:51 of her other text messages I have screen shots of
09:35:54 except for those messages, and I swore I thought I had
09:35:58 them because I remembered her talking about him taking
09:36:01 the phone, and I realize that I was never given those
09:36:04 text messages, so there's a discussion about it, she's
09:36:06 reading them from her phone, he takes the phone, and I
09:36:09 get all the other text messages, and for some reason
09:36:12 those aren't included and I thought they were very
09:36:14 significant so --

09:36:15 MR. OAKES: And again, I -- I thought I had
09:36:18 recalled seeing them at one point too, but there were a
09:36:20 number of text messages, but again, I went through, I
09:36:23 don't see that they're there. I asked Investigator
09:36:26 Pietroski if we have screen shots of everything else,
09:36:29 why not that.

09:36:30 THE COURT: Yes, that seems a little odd.

09:36:32 MR. OAKES: Yes, it does, but certainly, as
09:36:34 Ms. Peebles indicated, they had discussed it during the
09:36:36 recorded interview, the text message, again, my
09:36:39 recollection is it was read from what that text was.
09:36:44 Again, I think --

09:36:45 THE COURT: Are you willing to stipulate that
09:36:46 there were text messages and that this is the content
09:36:49 of the text message that says there's no --

09:36:51 MR. OAKES: Based upon the interview,
09:36:52 absolutely, and one of the items being stipulated to is
09:36:55 actually the interview I believe of Jennifer Wescott,
09:36:57 so the Court would have that information, and if it's
09:37:00 read from during that interview, the Court essentially
09:37:02 has that information.

09:37:04 MS. PEEBLES: I have no obviously objection to
09:37:06 having that in, but I just wished I would have the
09:37:11 whole entire context because she stops reading it and
09:37:13 says well, you're going to take my phone so I guess
09:37:16 you'll read it any way, so we have a portion of it but
09:37:19 we don't have all of it and I'm troubled by that, but I
09:37:22 will take what I can get at this point so I certainly
09:37:23 would agree to stipulate with the understanding that it
09:37:26 may or may not include everything.

09:37:29 THE COURT: So the parties will stipulate that
09:37:31 Ms. Wescott was reading a text message from her phone
09:37:35 during her interview with Investigator Pietroski.

09:37:40 MS. PEEBLES: Yes.

09:37:40 THE COURT: Okay.

09:37:41 MR. OAKES: Correct.

09:37:42 THE COURT: That parties were of the belief
09:37:45 that they had been -- pictures had been taken of those
09:37:47 text messages, and for some reason all text messages
09:37:52 that were before and apparently text messages after

09:37:56 exist, but the photos of those actual text messages do not exist. Are you still going to investigate? 09:37:59

09:38:03 MR. OAKES: Still going to investigate.

09:38:04 THE COURT: How about at this time have not been located. 09:38:06

09:38:07 MR. OAKES: At this time have not been located. Again, there are a lot of text messages on the phone, and I thought I had recalled seeing it, but I certainly couldn't swear to that, Your Honor, but again, I had talked to the investigator, again, those have not been located, but to the extent that the substance of those were read from during the interview, certainly we think the Court should consider that. 09:38:09 09:38:13 09:38:16 09:38:19 09:38:22 09:38:24 09:38:28

09:38:30 THE COURT: Okay, okay. Anything else on stipulations right now? 09:38:36

09:38:39 MR. OAKES: No, thank you, Your Honor.

09:38:40 MS. PEEBLES: No.

09:38:41 THE COURT: Mr. Thibodeau and officer, I'm going to ask that Mr. Thibodeau be returned to the holding area that he was in, okay? We'll be starting the hearing soon, sir, okay? 09:38:42 09:38:45 09:38:48

09:38:50 THE DEFENDANT: Okay. Thank you very much, Your Honor. 09:38:52

09:38:53 (Whereupon, there was a recess).

09:38:57 THE COURT: Mr. Thibodeau, please have a seat

10:08:27 next to your attorney at your attorney's desk. Before
10:08:55 we get started today, I want to address the gallery in
10:08:59 general. One of the great things of our legal system
10:09:01 is the fact that proceedings are open to the public.
10:09:05 That means you as interested parties or interested
10:09:08 people can come see this case unfold before you. It's
10:09:12 open to the public. You are spectators. I want to
10:09:17 make it perfectly clear that spectators are not allowed
10:09:21 to participate in what happens in front of the rail,
10:09:24 okay? That's where the lawyers and the judges and the
10:09:27 witnesses take -- take precedent. You are more than
10:09:31 welcome to stay through the entire proceeding, but I
10:09:34 will tell you your right to be here is not unlimited.
10:09:38 This court will not to any degree tolerate outbursts,
10:09:45 outcries, comments, statements. Anybody holding up a
10:09:49 placard or a sign will be asked to be removed from the
10:09:53 courtroom. This is a highly charged, highly emotional
10:09:57 case. The Court's job is to maintain the integrity of
10:10:03 the courtroom and I will do that, and if anybody shows
10:10:05 any disrespect for the system in the courtroom, you
10:10:10 will be asked to remove yourself from the courtroom.
10:10:13 I'll politely ask you first, and if it is a non-polite
10:10:19 manner, one of the gentleman or one of the women in a
10:10:21 black uniform is going to be escorting you out of the
10:10:24 courtroom, okay? I will say this every morning because

10:10:27 the gallery may change.

10:10:31 We're here today for the 440 motion hearing
10:10:34 filed on behalf of Gary J. Thibodeau, and Mr.
10:10:37 Thibodeau, you're here with your attorneys from the
10:10:39 Federal Public Defender's Office, Ms. Peebles and Ms.
10:10:44 Bianco, and the People are being represented by Mr.
10:10:47 Oakes and Mr. Moody. The motion's been submitted to
10:10:52 the Court this morning. The Court just started to
10:10:53 review the motion and had some conferences or had a
10:10:57 conference regarding the motion with the defense and
10:11:00 with the People. The Court is going to take about a
10:11:03 one-hour recess to investigate the allegations and
10:11:06 research the matter further. The Court will reconvene
10:11:08 at 11:10, 11:15. Thank you.

10:11:13 (Whereupon, there was a recess.)

10:49:03 THE COURT: Before I address the motion that
10:49:06 was made by Federal Public Defender's Office, I want to
10:49:11 talk to the press and the people in general about
10:49:14 photographs, still photographs. The Court has given
10:49:16 permission to the press to take still photographs as
10:49:19 long as the cameras don't make noise and disturb the
10:49:23 court process. The Court is not going to allow
10:49:27 photographs by the gallery in general. With regard to
10:49:30 the audio, the video, the Court has granted permission
10:49:34 for there to be one pool camera which is in the

10:49:37 courtroom right now. However, whether or not the
10:49:40 witness can be audio and videoed is based upon the
10:49:43 consent of the defense, the consent of the People and
10:49:46 the consent of the particular witness, so if there's a
10:49:49 witness on the stand that has consented to the audio
10:49:53 and the video, when that witness is done, the camera
10:49:56 will be turned off as will the audio. When the next
10:49:59 witness takes the stand, that witness will be asked on
10:50:02 the record whether or not they consent to being videoed
10:50:05 and audio taped. I've discussed this with Ms. Peebles
10:50:08 and Mr. Oakes. I believe what I've stated right now on
10:50:11 the record is consistent with what we talked about, is
10:50:14 that correct, Ms. Peebles?
10:50:15 MS. PEEBLES: It is, Your Honor.
10:50:16 THE COURT: Mr. Oakes?
10:50:16 MR. OAKES: It is, Your Honor, thank you.
10:50:18 THE COURT: As long as a witness consents to
10:50:20 being videoed and audio taped, does the defense have
10:50:23 any objection to that occurring?
10:50:24 MS. PEEBLES: No, Your Honor.
10:50:25 THE COURT: Okay, Mr. Oakes, do the People?
10:50:27 MR. OAKES: No, Your Honor.
10:50:28 THE COURT: Okay, with regard to the motion
10:50:31 submitted and made this morning by Ms. Peebles on
10:50:35 behalf of Mr. Thibodeau, the Court has researched the

10:50:38 issue. It has discussed the matter with the District
10:50:42 Attorney's Office as well as the defense, and though
10:50:46 the Court is not pleased with the lateness in
10:50:52 disclosure of great volumes of information by the
10:50:55 District Attorney's Office, the Court cannot find that
10:50:59 it equates to prosecutorial misconduct, and even if it
10:51:04 did under these circumstances, the remedy requested of
10:51:06 the decision to vacate the need for a hearing and move
10:51:13 forward vacating Mr. Thibodeau's judgment is not the
10:51:16 appropriate sanction in this case, Ms. Peebles. The
10:51:19 Court will grant your request under Paragraph 19
10:51:22 wherein the People will withdraw their allegation that
10:51:25 you did not act with due diligence in bringing this
10:51:28 petition or this -- this motion. Is that a consent
10:51:31 from the People, Mr. Oakes?

10:51:32 MR. OAKES: That is the consent from the
10:51:33 People, Judge.

10:51:34 THE COURT: The proper remedy under these
10:51:36 circumstances would be a request for an adjournment.
10:51:40 You've addressed that issue in your papers and you've
10:51:44 indicated that you wish to move forward today. Is that
10:51:45 correct, Ms. Peebles?

10:51:46 MS. PEEBLES: That is correct, Your Honor.

10:51:47 THE COURT: Mr. Oakes, any objection to moving
10:51:50 forward today?

10:51:51 MR. OAKES: The People have no objection to moving forward, Your Honor.

10:51:53 THE COURT: Ms. Peebles, you also requested sufficient time to prepare with regard to this late disclosure, and the Court will certainly allow that. If you find that during today's proceedings or any time during this week you need more time, let me know that and I will certainly allow you to recall a witness based upon what you may learn from the most recent disclosures from the District Attorney's Office. The Court is going to try to calendar this for a followup week if necessary starting February third. It's not a guarantee because I have to clear my calendar, but that's what I'm shooting for. February second will not be possible because I'm in Herkimer County. Would that be agreeable to the defense and to the People?

10:52:34 MS. PEEBLES: Yes, Your Honor.

10:52:35 MR. OAKES: Yes, Your Honor.

10:52:36 THE COURT: Ms. Peebles, this is your motion, your burden. Are you ready to call your first witness?

10:52:41 MS. PEEBLES: I am, Your Honor.

10:52:42 THE COURT: Call your first witness please.

10:52:44 MS. PEEBLES: Your Honor, the defense calls Judge Joseph Fahey.

10:52:48 THE COURT: Cameras off?

10:52:49 UNIDENTIFIED PERSON: Yes.

10:53:00 MR. OAKES: Excuse me, Your Honor. Before
10:53:02 Judge Fahey takes the witness stand, there is the issue
10:53:05 of, I apologize for forgetting it, the exclusion of
10:53:09 witnesses, sequestration of witnesses.

10:53:14 THE COURT: With regard to any person who is a
10:53:16 proposed witness or potential witness, that person will
10:53:18 not be allowed in the courtroom. With regard to the
10:53:22 sequestration of witnesses for convenience purposes,
10:53:25 there's a jury room available for witnesses to sit in.
10:53:29 There may be some overflow 'cause there's not an awful
10:53:31 lot of room based upon the number of witnesses. With
10:53:34 regard to Mr. Steen and Mr. Breckenridge, they're
10:53:37 currently being held in the Oswego County Jail
10:53:41 facility. They will be brought down when they are
10:53:43 ready to testify. I will try to notify the jail
10:53:47 facility when Mr. Steen's testimony is coming to an end
10:53:50 so that Mr. Breckenridge can be brought down in a
10:53:52 timely fashion. Is that what you're asking for with
10:53:55 regard to sequestration?

10:53:57 MR. OAKES: That is, Your Honor, thank you.

10:53:59 MS. PEEBLES: Your Honor, based on the fact
10:54:01 that I have Ms. Bianco scheduled to testify, I would
10:54:05 prefer to call her first then in that regard so that
10:54:08 she can stay in the courtroom.

10:54:09 THE COURT: That's fine. That's fine because you had listed her as your first witness any ways.

10:54:13 MS. PEEBLES: I did, but I know that Judge Fahey actually has a jury scheduled for tomorrow so I wanted to make sure --

10:54:18 THE COURT: So you're going to change who you're going to call today?

10:54:22 MS. PEEBLES: I'll currently right now call Randi Bianco to testify.

10:54:25 THE COURT: Ms. Bianco, please take the stand. Would counsel please approach?

(Whereupon, there was an off the record
10:55:08 discussion at the bench.)

10:55:08 THE CLERK: Raise your right hand, left on the Bible.

10:55:13 MR. MOODY: Judge, can we approach for one second?

10:55:16 THE COURT: Yes.

10:55:17 (Whereupon, there was an off the record discussion at the bench.)

10:55:58 THE COURT: Can we transport Mr. Steen back to the jail please? Thanks.

10:56:25 (Whereupon, there was an off the record discussion at the bench).

10:57:06 THE CLERK: Raise your right hand, left on the

10:57:09 Bible.

10:57:10 RANDI BIANCO, Called as a witness, having been
10:57:10 duly sworn, was examined and testified as follows:

10:57:10 THE CLERK: Okay, please state your name for
10:57:17 the record.

10:57:17 THE WITNESS: My name is Randi Juda Bianco,
10:57:21 B-I-A-N-C-O.

10:57:24 THE CLERK: Thank you. Have a seat please.
10:57:27 Make sure you speak into the mike.

DIRECT EXAMINATION

10:57:30 BY MS. PEEBLES:

10:57:32 **Q.** Where are you currently employed and in what
10:57:34 capacity?

10:57:34 **A.** I am an assistant federal public defender with the
10:57:38 Federal Defender's Office for the Northern District of New
10:57:41 York.

10:57:41 **Q.** How long have you been an assistant federal public
10:57:45 defender?

10:57:45 **A.** Two and a half years.

10:57:46 **Q.** How long have you been practicing law?

10:57:47 **A.** This is my twenty-sixth year.

10:57:49 **Q.** And where exactly are you admitted to practice?

10:57:53 **A.** I'm admitted to practice in New York State, the
10:57:56 Northern District of New York, the Second Circuit and the
10:58:00 United States Supreme Court.

10:58:02 **Q.** Prior to being hired as an assistant federal public defender, where were you working, what were you doing?

10:58:07 **A.** I was in private practice, and I focussed on criminal law both in state and federal court, and I also did a lot of appellate work, criminal appellate work.

10:58:18 **Q.** As an assistant federal defender, how are you -- how are we assigned cases?

10:58:23 **A.** We're assigned by the Court.

10:58:26 **Q.** Prior to your employment with our office, I want to ask you some questions about your representation of Gary Thibodeau. When did you first become involved in the case against Gary Thibodeau?

10:58:36 **A.** I became involved with Gary's case after the jury's verdict but prior to sentencing, so that would have been in 1995, I believe it was either July or August.

10:58:47 **Q.** How exactly did you become involved in representing Gary Thibodeau?

10:58:53 **A.** Judge Fahey telephoned me and asked him if I would assist him in the appellate process with Gary's case.

10:58:59 **Q.** So were you assigned or retained?

10:59:01 **A.** Neither. I did it pro bono.

10:59:03 **Q.** Were you involved in any of the pretrial proceedings?

10:59:06 **A.** None.

10:59:06 **Q.** Were you involved in the jury trial?

10:59:09 **A.** No.

10:59:09 **Q.** Were you involved in any way with pretrial discovery?

10:59:13 **A.** No.

10:59:13 **Q.** Did you ever accompany Judge Fahey to the DA's office to review discovery?

10:59:18 **A.** I did not.

10:59:19 **Q.** What role did you play in Gary Thibodeau's representation?

10:59:23 **A.** Well, I started with the CPL 330.30 hearing, the 10:59:28 motion to vacate before he was sentenced. Then I was 10:59:33 involved in the motion to vacate under CPL 440.10 which is 10:59:38 a motion to vacate after sentencing. I did his direct 10:59:42 appeal. I did the leave to appeal to the Court of Appeals. 10:59:46 I did the federal habeas corpus petition. I did the brief 10:59:53 with a number of other lawyers to the Second Circuit.

10:59:57 **Q.** So in total you have been representing Gary 10:59:59 Thibodeau for more than twenty years?

11:00:01 **A.** Yes. Most of my career.

11:00:03 **Q.** In preparation for your motion and appellate 11:00:05 arguments, did you review the contents of Gary Thibodeau's 11:00:08 trial file?

11:00:09 **A.** Numerous times.

11:00:12 **Q.** Did you thoroughly review the contents of that file?

11:00:15 **A.** I did.

11:00:15 **Q.** Did you have discussions with Attorney Fahey in preparation of your motions and appeals?

11:00:20 **A.** Yes.

11:00:20 **Q.** Were you working closely with Attorney Fahey?

11:00:23 **A.** Prior to him getting on the bench, yes, I did.

11:00:26 **Q.** When was the first post-conviction motion you filed on behalf of Gary Thibodeau?

11:00:31 **A.** That would have been in August of 1995. That would have been the CPL 330.30 motion.

11:00:37 **Q.** And what was the nature of the 330.30 motion?

11:00:40 **A.** Well, it had a few prongs, but the most as relevant here was the failure to disclose Brady material which consisted of diaries belonging to Heidi Allen. We'd never received those during the course of the trial, and we found out by way of an anonymous tip that those diaries were in existence, so that was the major prong of that motion.

11:01:04 **Q.** When you learned about this information, what -- what did you do once you got this tip about the diaries?

11:01:11 MR. MOODY: Judge, I'm going to object. How is this matter been decided, how is this relevant to this motion? This matter's been decided on at least twice.

11:01:18 THE COURT: Ms. Peebles?

11:01:19 MS. PEEBLES: Yeah, it's relevant, Your Honor, because it actually goes along with what our argument

11:01:22 is in connection with the Brady argument with the
11:01:24 confidential informant documents.

11:01:27 THE COURT: How does it go along with that?

11:01:28 MS. PEEBLES: There was a 1993 planner that
11:01:32 was logged in with the CI documents that was not turned
11:01:33 over to the defense, and it was never brought up or
11:01:36 raised during the course of the post-conviction
11:01:39 proceedings.

11:01:39 THE COURT: You do concede that the Appellate
11:01:41 Division, on two occasions, they decided the diaries
11:01:43 were non-Brady.

11:01:45 MS. PEEBLES: I'm conceding that, Judge, yes,
11:01:47 yes. That's not the point.

11:01:48 THE COURT: Okay.

11:01:49 MS. PEEBLES: But --

11:01:49 THE COURT: Are you trying to show a conduct
11:01:51 by the District Attorney's Office?

11:01:53 MS. PEEBLES: I'm trying to actually show why
11:01:56 it is Judge Fahey never received those CI documents
11:01:59 particularly because of how he was unable to articulate
11:02:04 the materiality of the diary simply because had he
11:02:08 known about the CI information, he could have argued
11:02:12 that there were -- there could be names of individuals
11:02:14 that perhaps would lend support to disclosure of the
11:02:19 diaries.

11:02:20 THE COURT: I'll allow it on that limited
11:02:22 basis. Go ahead.

11:02:24 **A.** I'm sorry, could you repeat the question?

11:02:26 **Q.** Yes. What did you do once you learned of this
11:02:32 confidential -- of the diary, excuse me.

11:02:35 **A.** Judge Fahey and I strategized and we decided that we
11:02:38 would write the district attorney a letter, that would be
11:02:41 Donald Dodd, asking if these diaries were in existence and
11:02:46 asking them to disclose them to us.

11:02:49 **Q.** And was there eventually an argument about this
11:02:52 diary?

11:02:53 **A.** Yes. On the date of sentencing, Donald Dodd brought
11:02:59 two very thick packets of copies before Judge Clary. He
11:03:05 refused to give us the diaries, said that they were not
11:03:09 discoverable, they were not Rosario material and they were
11:03:12 not Brady material, and we argued that we should be able to
11:03:17 look at them. Judge Clary made a determination that he
11:03:22 would view them in camera.

11:03:25 THE COURT: Stop. Please stop right there. I
11:03:27 did not ask the witness, do you consent to being
11:03:29 videotaped and audio taped?

11:03:31 THE WITNESS: Sure.

11:03:33 **Q.** So once the Court made this determination -- or I'll
11:03:40 withdraw that question. So in terms of your argument in
11:03:44 support of disclosure regarding the materiality of the

11:03:47 diaries, what were you arguing in support of the
11:03:51 materiality argument?

11:03:52 **A.** Well, the only thing we were told was that the
11:03:56 diaries, 1993 and 1994 diaries, did not contain the names
11:04:02 of either Gary Thibodeau or Richard Thibodeau and that the
11:04:06 diaries were basically daily notations and they stopped
11:04:14 approximately four or five days before Ms. Allen's
11:04:17 disappearance. So we argued -- that was the only
11:04:22 information we had, so we had to argue kind of in a vacuum
11:04:25 that the failure to mention Gary or Richard Thibodeau in
11:04:29 and of itself was Brady material because it gave a daily
11:04:33 account of her activities for two years up and until a few
11:04:37 days before her abduction.

11:04:39 **Q.** And you weren't able to ever view the diaries.

11:04:42 **A.** Never.

11:04:43 **Q.** Now at -- at that time, did you have knowledge
11:04:47 regarding whether or not Heidi Allen was an informant or
11:04:51 had ever been signed up as an informant?

11:04:53 **A.** I had no knowledge of that.

11:04:55 **Q.** Would that information have been helpful to you in
11:04:59 your argument concerning the materiality of the Heidi Allen
11:05:03 planner/diary?

11:05:04 **A.** Absolutely because had we known she was an
11:05:06 informant, we would have wanted to know the names of the
11:05:08 persons listed in the diary to see if there was any kind of

11:05:12 a connection for other possible suspects to have wanted to abduct her.

11:05:16 **Q.** At the time you were arguing this 330.30 motion, were you aware Heidi Allen's informant information had been dropped in the parking lot of the D & W?

11:05:26 **A.** Absolutely not.

11:05:26 **Q.** Did Judge Fahey inquire whether or not there was anything else that was suppressed or logged in similar to these diaries?

11:05:32 **A.** He did. He did ask if there was other material, and Donald Dodd responded "not that I am aware of."

11:05:39 **Q.** Did the district attorney ever mention the confidential informant document being logged in with the planner?

11:05:50 **A.** No.

11:05:51 **Q.** Did you ever raise the issue regarding the suppressed diary in your appeal on behalf of Gary Thibodeau?

11:05:58 **A.** I did.

11:05:59 **Q.** Did you ever raise the issue of Heidi Allen as an informant during the appeal process?

11:06:04 **A.** No.

11:06:05 **Q.** Why not?

11:06:05 **A.** I didn't know she was an informant.

11:06:07 **Q.** Now you say you have been representing Gary

11:06:13 Thibodeau for twenty years, and how often have you gone
11:06:15 through the contents of his file?
11:06:17 **A.** Numerous times. Too many to count.
11:06:20 **Q.** In addition to Gary Thibodeau's file, did you ever
11:06:24 have an opportunity to review the contents of Richard
11:06:26 Thibodeau's trial file?
11:06:27 **A.** I did.
11:06:28 **Q.** Now I'm going to ask you some questions about your
11:06:30 review of Richard Thibodeau's file. When did you acquire
11:06:34 Richard Thibodeau's trial or trial file?
11:06:37 **A.** I believe it was June or July of 2014.
11:06:42 **Q.** And how did you come in possession of Richard's
11:06:47 trial file?
11:06:47 **A.** Our chief investigator contacted Richard Thibodeau
11:06:52 and he had the file and he picked up the file and brought
11:06:55 it to our office. The file was enormous, consisted of
11:07:00 about eight boxes, banker's boxes.
11:07:02 **Q.** And what did you do once you acquired Richard's
11:07:05 file?
11:07:06 **A.** Well, we went through the file because Mr. Oakes had
11:07:11 provided me with some information in June of 2013
11:07:16 concerning the other possible suspects, and one of those
11:07:21 persons who was giving information was named Jennifer
11:07:26 Wescott, and I didn't remember hearing anything about her
11:07:31 so I wanted to know if -- if she came up in Richard

11:07:34 Thibodeau's file, so that was my interest in going through
11:07:37 his file.

11:07:38 **Q.** What was discovered upon review of Richard
11:07:43 Thibodeau's trial?

11:07:44 **A.** We found police reports which showed, revealed, that
11:07:53 Heidi Allen was signed up as a confidential informant and
11:07:58 that her informant information was accidently dropped in
11:08:04 the parking lot of where she worked which was the D & W
11:08:08 Convenience Store.

11:08:10 **Q.** I'm going to hand you what's been marked as defense
11:08:13 Exhibit 8.

11:08:25 MS. PEEBLES: May I approach, Judge?

11:08:26 THE COURT: Yes.

11:08:27 **Q.** Can you identify that document?

11:08:28 **A.** Yes. This appears to be an internal memorandum by
11:08:34 investigator or Deputy Montgomery dated December eighth,
11:08:39 1994 received by the Oswego County Sheriff's Office
11:08:43 December ninth, 1994.

11:08:46 MS. PEEBLES: I believe we have a stipulation,
11:08:47 Your Honor, and the prosecution has agreed to enter the
11:08:51 Exhibit 8 into evidence.

11:08:54 MR. OAKES: That's correct, Your Honor.

11:08:56 THE COURT: Exhibit 8 will be in evidence.

(Defendant's Exhibit No. 8 was received in
11:08:59 evidence).

11:08:59 **Q.** Ms. Bianco, when is the first time you ever laid eyes on that document?

11:09:01 **A.** When I reviewed Richard Thibodeau's file in June or July of 2014.

11:09:10 **Q.** Now can you please read the contents of Exhibit 8?

11:09:13 **A.** Certainly. It's dated eight December, 1994, fifteen hundred hours, subject, Heidi Allen investigation. "This report is filed pursuant to a request by Lieutenant Goodsell. Back in late 1991 or early 1992, while on routine patrol, this writer stopped at the D & W Convenience Store and was asked about an index card and photo that had been found in the parking lot at the store. Patrol was given the items. One was a Polaroid photo of Heidi Allen. The other was a three by five index card with Heidi's name, address and phone number on it and a code word that I can't remember. It also had Deputy VanPatten's name on it. Upon contact with Deputy VanPatten, he stated to leave it in the mail -- his mailbox. Upon return to OCSD, I left the photo and card in Deputy VanPatten's mailbox, and this was the last time I saw of them," and that has a signature, and it's of the officer, and it's received by the Oswego County Sheriff's Department with a stamp December ninth, 1994.

11:10:35 **Q.** And it's your testimony that prior to reviewing Richard Thibodeau's trial or trial file in June of 2014, 11:10:43 you'd never seen that document before.

11:10:45 **A.** I never saw that document.

11:10:48 **Q.** I'm going to hand you now what's been marked as
11:10:50 Defense Exhibit 9 and ask if you can identify that
11:10:53 document.

11:10:54 **A.** This is an internal memo prepared by or signed by
11:11:00 Deputy VanPatten. It's stamped by the Oswego County
11:11:03 Sheriff's Department received December ninth, 1994.

11:11:08 MS. PEEBLES: I believe we also have a
11:11:12 stipulation with regard to Exhibit 9 ,Your Honor.

11:11:16 THE COURT: Mr. Oakes?

11:11:17 MR. OAKES: That's correct.

11:11:18 THE COURT: Exhibit 9 moved in.

(Defendant's Exhibit No. 9 was received in
11:11:21 evidence).

11:11:21 **Q.** Ms. Bianco, could you please read Exhibit 9?

11:11:24 **A.** Certainly. "In 1991, this reporter was assigned to
11:11:27 the anti-crime unit under the supervision of Sergeant
11:11:32 Lortie. During this time frame, this reporter was
11:11:36 approached by Judge Sturtz regarding his niece, Heidi
11:11:39 Allen, possibly having information regarding illegal drug
11:11:45 trafficking in Oswego County. This reporter, along with
11:11:49 Sergeant Lortie, proceeded to the Allen residence at a
11:11:53 later date and spoke to Heidi and her parents regarding
11:11:57 information that she had knowledge to. Heidi advised both

11:12:02 officers that she had been to several parties in the Scriba
11:12:05 area where drugs were present. Heidi also made reference
11:12:09 to the students in the Mexico school that were involved in
11:12:13 drug activity. No specific reference was made to any one
11:12:18 person in particular. This reporter took a picture of
11:12:21 Heidi and completed a three by five index card containing
11:12:26 her information about her address and other personal
11:12:31 information. At an unknown time, this reporter used that
11:12:35 phone at the D & W Store located at intersection of State
11:12:40 Route 104 and 104B. During this time frame, unknown to
11:12:46 this reporter, I dropped the three by five index card and
11:12:51 the photo of Heidi. While off duty, this reporter received
11:12:55 a phone call from Deputy Montgomery advising this reporter
11:13:00 that the paperwork regarding Heidi was turned over to him
11:13:03 by an employee at the D & W Store. Patrol advised
11:13:09 Montgomery to place the paperwork in my mailbox. This
11:13:12 reporter never used any information or Heidi as a
11:13:16 confidential informant in any criminal cases. In 1994,
11:13:21 when Heidi came up missing, this reporter received a phone
11:13:24 call at my residence from Sergeant Lortie. Lortie advised
11:13:29 this reporter that Heidi was a confidential informant for
11:13:34 me in 1991. This reporter advised Lortie that I had no
11:13:38 recall about the case involving Heidi. This reporter was
11:13:42 then advised that Heidi was the relative of Judge Sturtz
11:13:47 and inquired where the case packet was located as it was

11:13:50 not in the drug locked file. Patrol advised Lortie that
11:13:55 the paperwork was located in this reporter's mailbox
11:13:59 located at the Sheriff's office. The paperwork was
11:14:02 recovered by an unknown person from the mailbox. While
11:14:06 this reporter was working at the Heidi center, this
11:14:09 reporter saw the paperwork which was retrieved from the
11:14:11 reporter's mailbox." It's signed Deputy VanPatten, it's
11:14:16 stamped received December ninth, 1994, Oswego County
11:14:20 Sheriff's Department.

11:14:27 THE COURT: Counsel please approach, Mr.
11:14:29 Miles, Mr. Schwartz, please approach.

11:15:13 (Whereupon, there was an off the record
11:16:41 discussion at the bench.)

11:16:41 THE COURT: Go ahead. Ms. Peebles.

11:16:44 **Q.** Now Ms. Bianco, it's your testimony you never saw
11:16:47 that Exhibit 9.

11:16:49 **A.** I've never saw Deputy VanPatten's -- this report
11:16:52 from Deputy VanPatten, Exhibit 9, never saw it. I don't
11:16:57 know if my mike is now turned off.

11:17:24 **Q.** I'm going to hand you what's been marked as
11:17:26 Defendant's Exhibit 10 and ask if you can look at that and
11:17:30 identify what that document is.

11:17:30 **A.** Yes. This is a police report by a Deputy M. J.
11:17:38 Anderson which is stamped received Oswego County Sheriff's
11:17:43 Department December ninth, 1994.

11:17:46 **Q.** And when's the first time you saw that document?

11:17:50 **A.** That would be June or July of 2014 in Richard 11:17:54 Thibodeau's trial file.

11:17:55 MS. PEEBLES: I'm going to move to offer 11:17:58 Exhibit 8, or 10, into evidence. It's not part of our 11:18:01 stipulation.

11:18:02 THE COURT: Mr. Oakes?

11:18:03 MR. OAKES: No objection, Your Honor.

11:18:09 THE COURT: No objection, Exhibit 10 is in 11:18:11 evidence.

(Defendant's Exhibit No. 10 was received in 11:18:11 evidence).

11:18:11 **Q.** Ms. Bianco, could you please read Exhibit 10?

11:18:13 **A.** Yes. "In 1991, patrol was assigned to the 11:18:16 anti-crime team, was being used in a part-time undercover 11:18:20 capacity. While assigned to this duty, patrol was advised 11:18:24 by Sergeant Lortie that he had developed information from 11:18:28 Judge Sturtz that his niece, Heidi Allen, had some 11:18:32 information in reference to drug activity in the Scriba 11:18:35 area involving some Mexico High School students. Patrol 11:18:40 was advised that Sergeant Lortie and Deputy VanPatten had 11:18:43 met with Heidi at her residence and she would be coming to 11:18:46 the Sheriff's Office to meet with me further, to meet with 11:18:51 me and further discuss the drug activity. Allen was driven 11:18:56 to the office by her boyfriend and he also sat in on the

11:18:59 meeting. Allen described to us that there were several
11:19:03 parties that were held involving the use of drugs and that
11:19:06 a friend of hers was becoming mixed up in it and she would
11:19:10 like to help her. Allen stated that she did not use drugs,
11:19:15 nor did -- nor could she buy any drugs firsthand. She only
11:19:20 had visual knowledge of the activity. After the meeting
11:19:24 was over, patrol expressed no interest in using Allen as an
11:19:28 informant as she had no true information that could be
11:19:32 useful to us. Allen was never formally signed up as a
11:19:36 confidential informant and the case was never worked but
11:19:39 left inactive," and there's a typewritten Deputy M. J.
11:19:44 Anderson, stamp marked received Oswego County Sheriff's
11:19:48 Department December ninth, 1994.

11:19:52 **Q.** And when was the first time that you saw that
11:19:54 document?

11:19:54 **A.** June or July of 2014 in Richard Thibodeau's trial
11:19:59 file.

11:19:59 **Q.** And prior to that you had never seen that document?

11:20:02 **A.** I had never seen this document.

11:20:06 **Q.** Now I'm going to hand you what's been marked as
11:20:09 Defendant's Exhibit 11 which I believe is also stipulated
11:20:12 in by the prosecution.

11:20:14 THE COURT: Mr. Oakes, is that true?

11:20:15 MR. OAKES: Yes, Your Honor.

11:20:18 THE COURT: Thank you.

(Defendant's Exhibit No. 11 was received in evidence).

11:20:25 **Q.** Can you identify that document?

11:20:26 **A.** Yes. The first page is an inventory receipt, the 11:20:31 second page is a report and the third page is an evidence 11:20:38 receipt.

11:20:39 **Q.** Prior to discovering this document in Richard 11:20:42 Thibodeau's trial file, had you ever seen this document 11:20:45 before?

11:20:45 **A.** Never.

11:20:46 **Q.** I'm going to direct your attention to the bottom of 11:20:49 page one of Exhibit 11. Can you please read the third 11:20:54 entry on that report?

11:20:55 **A.** Yes. It's dated 5/23/95, comp number 94-3829, 11:21:05 Investigator Kleist, defendant is marked DEF Richard and 11:21:13 Gary Thibodeau, victim Heidi Allen, one dash plastic bag 11:21:18 with miscellaneous papers, photograph, 1993 personal 11:21:23 planner stored on Shelf B20 of evidence room, logged by 11:21:29 Investigator T. Whipple, and there's a stamp received 11:21:35 Oswego County Sheriff's Department May twenty-third, 1995.

11:21:40 **Q.** All right, so looking at that last entry, on the 11:21:48 front page, it looks as though based on the information 11:21:51 there that that -- those items of evidence were logged back 11:21:56 in on May twenty-third by Investigator Whipple?

11:21:59 **A.** Yes.

11:22:00 **Q.** And the date stamped is May twenty-third.
11:22:03 **A.** May twenty-third, 1995.
11:22:05 **Q.** And when was Gary Thibodeau's trial? When did his
11:22:09 jury trial begin?
11:22:10 **A.** May twenty-second, 1995.
11:22:14 **Q.** All right, now, and you found that document in
11:22:18 Richard Thibodeau's trial file, is that correct?
11:22:21 **A.** Yes.
11:22:22 **Q.** Now, refer to the second page of Exhibit 11.
11:22:37 MS. PEEBLES: Can you increase the size?
11:22:39 **Q.** Would you please read what's on page two of Exhibit
11:22:43 11?
11:22:43 **A.** Yes. It's a New York State supplemental report.
11:22:47 The agency is OCSD. Division precinct CID. Incident
11:22:55 number 94-3829. The date is 5/16/95. The time of the
11:23:03 report is 2:05 p.m. "This writer, which would be
11:23:08 Investigator Kleist, along with Investigator Yerdon, while
11:23:13 making an inventory of items that were recovered during the
11:23:17 area searches of the Heidi Allen abduction, found paperwork
11:23:22 that referred to her as a confidential informant, a
11:23:27 photograph of her, names and numbers, a Sheriff's
11:23:31 Department card and paperwork with drug information. Also
11:23:36 notes from day of abduction and a 1993 personal planner. I
11:23:42 marked said items as evidence and secured in evidence
11:23:45 locker items found in box number twenty-three." There are

11:23:51 two day stamps on this particular report. One is received
11:23:57 by District Attorney's Office May sixteenth, 1995, the
11:24:02 second date stamped is May twenty-third, 1995, and that's
11:24:08 received Oswego County Sheriff's Department.

11:24:13 **Q.** So the date stamp received by the District
11:24:17 Attorney's Office reads May sixteenth of 1995.

11:24:21 **A.** Yes.

11:24:22 **Q.** And the date stamp back to the Sheriff's office is
11:24:27 date stamped May twenty-third of 1995.

11:24:29 **A.** Yes.

11:24:30 **Q.** And again, Mr. Thibodeau's trial started on?

11:24:36 **A.** May twenty-second, 1995.

11:24:37 **Q.** Have you ever seen a 1993 personal planner?

11:24:42 **A.** No, I did not.

11:24:44 **Q.** Did we recently see the 1993 planner?

11:24:47 **A.** About a month ago we saw it.

11:24:49 **Q.** Is that the first time we've ever seen -- you've
11:24:52 ever seen the 1993 personal planner?

11:24:54 **A.** First time I've seen it.

11:24:56 **Q.** Was that ever disclosed in either Richard
11:24:59 Thibodeau's trial file or Gary's trial file?

11:25:05 **A.** No, I do not believe so. I know it wasn't in Gary's
11:25:11 trial file. I'm absolutely positive.

11:25:13 **Q.** Did we see was there a 1993 personal planner in
11:25:17 Richard Thibodeau's trial file?

11:25:19 **A.** In Richard Thibodeau's trial file there was.

11:25:23 **Q.** The personal planner?

11:25:24 **A.** The personal planner, no, no, the personal planner
11:25:27 was not. This report was in Richard Thibodeau's file.

11:25:30 **Q.** The report.

11:25:31 **A.** But the planner was not in the report.

11:25:32 **Q.** I'm talking about the actual planner.

11:25:34 **A.** No, the actual planner was not there.

11:25:36 **Q.** It was not in either Richard Thibodeau's trial file
11:25:39 and it was not in Gary Thibodeau's trial file.

11:25:42 **A.** No, neither.

11:25:44 **Q.** Now, the planner, the 1993 planner is different than
11:25:49 the diaries, correct?

11:25:51 **A.** We recently learned that, yes.

11:25:55 **Q.** There's a third page to Exhibit 11. Could you turn
11:26:02 to the third page?

11:26:04 **A.** Yes.

11:26:05 **Q.** And could you identify what's depicted on that third
11:26:09 page?

11:26:09 **A.** This is an evidence tag, and it is inventory,
11:26:17 description of certain evidence, miscellaneous papers,
11:26:20 photograph, 1993 personal planner, Richard and Gary
11:26:24 Thibodeau are the suspects, victim Heidi Allen, and the
11:26:28 location of the recovery is OCSD bulk evidence storage.
11:26:34 It's a stamp on it May twenty-third, 1995, and there are

11:26:40 attached to it some notes, but you can't really read the
11:26:45 note. It's like a photocopy.

11:26:47 **Q.** So it appears to be a copy of an evidence tag.

11:26:51 **A.** Yes.

11:26:51 **Q.** I'm going to hand you now what's been marked as
11:26:55 defense Exhibit 11A and I believe we have a stipulation
11:26:58 with regard to --

11:26:59 THE COURT: Mr. Oakes?

11:27:00 MR. OAKES: Yes, Your Honor.

11:27:01 THE COURT: Eleven is moved in based on
11:27:07 stipulation as will be 11A.

(Defendant's Exhibit No. 11A was received in
11:27:09 evidence).

11:27:09 **Q.** Could you identify that document?

11:27:12 **A.** This is a letter from Donald Dodd with a bunch of
11:27:17 attachments relating to the confidential informant file.

11:27:21 **Q.** And where is -- when was the first time you saw that
11:27:24 document?

11:27:24 **A.** First time I ever saw this document was with the
11:27:28 district attorney's response to our 440 motion, so that
11:27:33 would have been I believe October of 2014.

11:27:38 **Q.** And is there a date on the -- on the -- on the front
11:27:42 first page of Exhibit 11A?

11:27:44 **A.** Yes. The date says May seventeenth, 1995.

11:27:49 **Q.** And could you read the contents of 11A please?

11:27:53 **A.** Yes. It's addressed to William Walsh, Esquire, 11:27:57 Joseph Fahey, Esquire, I'm leaving out the addresses, Re: 11:28:01 People versus Richard Thibodeau, People versus Gary 11:28:05 Thibodeau, Indictment 94-161. "Dear Gentlemen: Pursuant 11:28:11 to the People's ongoing duty to disclose, CPL Section 11:28:18 240.60, I am providing with this letter copies of 11:28:22 additional discoverable property obtained since my last 11:28:26 disclosure to you by letter dated April twenty-fifth, 1995. 11:28:31 Thank you for your attention to this matter. Very truly 11:28:34 yours, Donald H. Dodd, Chief Assistant District Attorney," 11:28:38 and it cc'd to the Honorable Lee Clary.

11:28:42 **Q.** And is there any reference to what he is turning 11:28:46 over in that letter?

11:28:46 **A.** No. It's just a very general letter.

11:28:49 **Q.** All right, I'm going to ask you to flip to page two 11:28:51 of 11A please, and what is depicted on page two?

11:28:58 **A.** Well, this is the Investigator Kleist report.

11:29:03 **Q.** Is that different from Exhibit 11, the Kleist report 11:29:07 that you found in Judge Walsh's trial file?

11:29:11 **A.** Well, it is, because this one has only one stamp on 11:29:16 it. This one the stamp is received May sixteenth, 1995, 11:29:21 District Attorney's Office. The letter that I saw was the 11:29:26 one that said -- it had this stamp and had a second stamp, 11:29:31 May twenty-third, 1995, Oswego County Sheriff's Office, so 11:29:36 this one here is missing the second stamp.

11:29:39 **Q.** Was -- was there any dock -- was that document in
11:29:44 Richard Thibodeau's trial file?

11:29:46 **A.** This document was not in Richard Thibodeau's trial
11:29:49 file. It didn't have the second stamp.

11:29:51 **Q.** So the document you found in Richard Thibodeau's
11:29:54 trial reflected two stamps.

11:29:56 **A.** Yes.

11:29:57 **Q.** Now, I'd like you to turn to page three of 11A.

11:30:06 **A.** Yes.

11:30:07 **Q.** Page three. What's on page three?

11:30:10 **A.** This is a -- it's confidential informant card.
11:30:18 There is a picture of a young woman who's identified as
11:30:21 Heidi Allen. Her address, RD1, 6 RT, 6A, Oswego, New York,
11:30:28 13126. Phone and date of birth. 963-3338. And date of
11:30:39 birth, 9/14/75. Social Security number 061-64-9714, code
11:30:49 name Julia Roberts. Deputy working with, colon, there's no
11:30:55 deputy listed. Height five-nine, weight one-hundred and
11:30:59 fifty-six pounds, eye color blue, hair color brown.
11:31:04 There's a copy of a Sheriff's Department card, Oswego
11:31:09 County Sheriff's Department, with no officer's signature
11:31:12 there, and then there is a two thumb prints, a left thumb
11:31:18 print and a right thumb print with a date 12/11/91.

11:31:23 **Q.** When is the first time you ever saw those documents?

11:31:28 **A.** First time I ever saw these documents was with the
11:31:32 prosecutor's response to our motion to vacate which would

11:31:36 have been in October fourteenth, 1991, and this stands out
11:31:41 to me because I had never seen a confidential informant
11:31:44 card in twenty-six years.

11:31:46 **Q.** Now, could you please turn to page four of --

11:31:52 MR. MOODY: Can we have a second? There is
11:31:54 someone talking in the gallery who is bothering --

11:31:56 THE COURT: Who is talking?

11:31:58 MR. MOODY: I believe it's this gentleman
11:31:59 here.

11:31:59 THE COURT: Gentleman in the red shirt? Sir,
11:32:02 did you hear what I said before? If you disturb the
11:32:05 Court proceeding you will be asked to leave.

11:32:07 UNIDENTIFIED PERSON: Yes, sir.

11:32:08 THE COURT: Do it again you will be asked to
11:32:10 leave, okay, sir?

11:32:11 UNIDENTIFIED PERSON: Thank you.

11:32:12 THE COURT: For clarification, I believe she
11:32:14 said 1991.

11:32:15 THE WITNESS: I did say 1991. Dated 12/11/91
11:32:21 on the bottom.

11:32:21 THE COURT: I thought you said when you first
11:32:24 saw it was in 1991.

11:32:25 THE WITNESS: Oh, no, first saw it in 2014.

11:32:28 **Q.** All right, what's depicted on page four of 11A?

11:32:35 **A.** Well, this has some handwriting on it. "P. J.

11:32:43 Gorman, 21 Route 104, one three, Nine Mile Point, drives
11:32:48 pickup, eleventh Tracy Mather, Mexico, sixteen years."
11:32:56 Handwritten notes.

11:32:56 **Q.** That was attached to the confidential informant
11:32:59 card?

11:32:59 **A.** Yes.

11:33:00 **Q.** And can I ask you to look at the -- page five of 11A
11:33:04 please?

11:33:05 **A.** Yes.

11:33:06 **Q.** And what is depicted on page five?

11:33:08 **A.** More handwritten notes. "Asked Zeller, Rob LaBarge,
11:33:15 twelfth grade, Mexico, Thubbs (ph), it looks like Thubbs
11:33:21 Road, Julia Roberts," the code name there on the right-hand
11:33:27 side, "works with Dennis Douglas," and under that it says
11:33:31 "speed."

11:33:37 **Q.** Did you at any time throughout your representation
11:33:40 of Gary Thibodeau know that Heidi Allen provided a name of
11:33:45 an acid seller?

11:33:46 **A.** No.

11:33:46 **Q.** Did you know that she provided the name of someone
11:33:48 who sold speed?

11:33:49 **A.** No.

11:33:50 **Q.** Did you have any idea that she actually had an
11:33:52 informant card with a fingerprint and all of her
11:33:55 identification?

11:33:56 **A.** I had no idea.

11:33:57 **Q.** Were any of those documents that you just referred to in either Judge Walsh or Judge Fahey's trial files?

11:34:06 **A.** No, they were in neither file.

11:34:09 **Q.** At any time during your representation of Gary Thibodeau during the appeal process know or were aware of Exhibits 8, 9, 10, 11 and 11A?

11:34:23 **A.** I was not aware of any of them.

11:34:24 **Q.** Had you known about Heidi Allen's status as an informant and the fact that her identity had been compromised, what would you have argued in support of the materiality of the diary?

11:34:43 **A.** Well, I would have highlighted the fact that she was an informant, that she's naming specific people, and I truly would want to know whether or not these people were listed in her -- her diary, whether or not there was any reference to Julia Roberts or any of these other things that's noted in the paperwork here.

11:35:05 **Q.** And you actually did a habeas petition on behalf of Gary Thibodeau concerning the suppressed diaries.

11:35:12 **A.** I did a habeas petition in federal court, northern district of New York, yes.

11:35:16 **Q.** And would you have included that information in support of your argument with regard to the suppressed diaries?

11:35:23 **A.** Yes.
11:35:23 **Q.** When did the Second Circuit Court of Appeals decide
11:35:29 Gary Thibodeau's habeas petition?
11:35:32 **A.** In 2011.
11:35:34 **Q.** Now, I want to ask you some questions about your
11:35:36 representation of Gary Thibodeau following the Second
11:35:39 Circuit's decision regarding your habeas petition. Between
11:35:44 2007 and your employment with the Federal Public Defender's
11:35:47 Office, did you file any additional motions?
11:35:49 **A.** I didn't file any additional motions.
11:35:51 **Q.** Were you continuing to represent Gary Thibodeau?
11:35:54 **A.** I was 'cause from time to time I would get a lead or
11:35:58 a tip to check out and I would always check them out to see
11:36:02 if the information was viable or could help Gary in an
11:36:06 effort for a new trial.
11:36:08 **Q.** Now I want to ask you some questions about the most
11:36:11 recent information you received concerning Gary Thibodeau's
11:36:14 case. When did you first become aware that there may be
11:36:18 new information in the case -- in the case involving Gary
11:36:22 Thibodeau?
11:36:22 **A.** In February of 2013.
11:36:24 **Q.** Who contacted you about Gary Thibodeau?
11:36:27 **A.** I was contacted by Attorney Lisa Cuomo. She and
11:36:33 Attorney Mary Felasco had bought my law practice and had my
11:36:37 law office telephone number, and Lisa Cuomo contacted me to

11:36:43 advise me that there was a woman calling who claimed to have information about Gary Thibodeau that could help him.

11:36:51 **Q.** Were you able to identify who the woman was?

11:36:54 **A.** I was not. I tried to identify who the woman was. Apparently the woman spoke to Attorney Mary Felasco, Mary Felasco then referred the woman to District Attorney Greg Oakes. She thereafter threw away the phone number and the name of the woman so I couldn't get that information from them.

11:37:19 **Q.** Did you attempt to contact Mr. Oakes?

11:37:23 **A.** I did. I called him.

11:37:24 **Q.** And when you contacted Mr. Oakes, did you ask him who the woman was?

11:37:29 **A.** I did ask him. He refused to give me the name or the number.

11:37:34 **Q.** What was -- what -- what did you learn?

11:37:37 **A.** I learned that a woman had contacted him through Mary Felasco, and that Mr. Oakes's office was going to investigate the claim, and they refused to give me her name or her number for me to reach out to her.

11:37:58 **Q.** Now did you happen to have a conversation with Mr. Oakes regarding whether or not they were going to investigate this new information?

11:38:07 **A.** He said he was going to investigate. We got into a -- somewhat of an argument about why it couldn't be given

11:38:16 to me when she called me in the first place.

11:38:18 **Q.** And did you ask him for her number and her contact information?

11:38:23 **A.** Oh, I did.

11:38:24 **Q.** And did he give it to you?

11:38:26 **A.** No. My next conversation was with Mr. Oakes and Mr. 11:38:30 Moody. We went down the same line. I wanted the name. I 11:38:36 wanted the number. They told me that they weren't going to 11:38:41 give it to me, that I was with the Office of the Federal 11:38:45 Public Defender's now, and basically I couldn't do anything 11:38:48 with it, and they weren't going to give it to me. I then 11:38:51 questioned the ethics of the situation because the woman 11:38:56 had contacted my former office, my number, spoke to 11:39:03 Attorney Mary Felasco who was with the District Attorney's 11:39:06 Office for a number of years, with Oswego County District 11:39:09 Attorney's Office. The fact that she didn't know she was 11:39:11 talking to a member of their office and then she didn't 11:39:14 give me the information and gave it to them, I had a real 11:39:17 problem with that, and I said that I was going to file a 11:39:20 motion any way.

11:39:21 **Q.** Did you hear back or did you -- was there an 11:39:25 understanding or an agreement? Did you come -- did you 11:39:27 come to an understanding or an agreement with Mr. Oakes 11:39:31 after you had this conversation with him?

11:39:32 **A.** Yes. He said he would investigate the matter, would

11:39:37 give me updates, but would not give me names or contact
11:39:42 information of the people that he was looking at, but he
11:39:46 would keep me informed as to the status of the
11:39:50 investigation in a general way.

11:39:51 **Q.** And did he do that?

11:39:53 **A.** He did.

11:39:54 **Q.** And did you eventually receive information
11:40:00 concerning this investigation from Mr. Oakes?

11:40:02 **A.** I did. I received it in the second or third week of
11:40:08 June of 2013.

11:40:12 **Q.** Ms. Bianco, I'm going to hand you Defense Exhibit 35
11:41:33 which has been revised and ask if you can identify what
11:41:37 Exhibit 35 is.

11:41:39 **A.** This is the letter that I received from District
11:41:48 Attorney Oakes. It's dated June six, 2013, but I did not
11:41:52 receive it on that date. He tried to e-mail me at first
11:41:55 but I couldn't open up any of the attachments. It has a
11:41:59 number of attachments with it.

11:42:00 **Q.** All right, could you please identify what those
11:42:05 attachments are?

11:42:05 THE COURT: That's been stipulated to?

MS. PEEBLES: Yes.

11:42:08 THE COURT: If I remember the stipulations
11:42:09 correctly, Mr. Oakes.

11:42:10 MR. OAKES: We stipulate, Your Honor.

11:42:11 THE COURT: Okay, thank you.

(Defendant's Exhibit No. 35 was received in evidence).

11:42:14 **A.** It had a number of exhibits attached to it. Exhibit 11:42:18 1, Oswego County Sheriff's Department, CID, contact record. 11:42:23 Two, statement of Tonya Priest dated 2/28/13. Three, 11:42:28 statement of Tonya Priest dated 3/1/13. Four, Facebook 11:42:33 messages between Tonya Priest and Jennifer Westcott. Five, 11:42:38 copies of photos taken, text messages sent between Tonya 11:42:42 Priest and Jennifer Westcott. Six, e-mails from Tonya 11:42:47 Priest forwarding text messages that were exchanged with 11:42:50 Jennifer Wescott, and it's listing the number of pages 11:42:53 along with it. Seven, e-mails from Tonya Priest showing 11:42:57 Facebook communications with an individual named Douglas 11:43:02 Heartraft (ph). That attaches Exhibit 2, statement of 11:43:06 Jennifer Wescott, dated 3/7/13 to statement of James Steen 11:43:12 dated 3/15/13. Three, statement of Roger Breckenridge 11:43:17 dated 3/19/13. Four, receipt for property from Michael 11:43:22 Bohrer dated 3/21/13. Five, photos taken during interview 11:43:28 of Bohrer. Six, statement of Megan Shaw. Attaches Exhibit 11:43:35 3 are copies of the following items. One, CD of a digital 11:43:40 recording of 2/26/13. Phone call interview with Tonya 11:43:45 Priest. Two, CD of digital recording of 3/2/13, phone call 11:43:51 between Tonya Priest and Jennifer Wescott. Three, CD of 11:43:55 digital recording of 3/7/13 interview of Jennifer Wescott.

11:44:00 Four, CD of digital recording of 3/21/13 interview of
11:44:06 Michael Bohrer. Five, CD of digital photos taken of text
11:44:13 messages on Jennifer Wescott's cell phone. And then it
11:44:17 goes on before it goes into Exhibit 4, "Additionally, in
11:44:20 April of this year, my office received information that a
11:44:24 recent arrestee named Charles Bliss claimed to have
11:44:27 information regarding the location of Heidi Allen's body.
11:44:30 Shortly thereafter, I received information from Onondaga
11:44:34 County Chief District Attorney Rick Trunfio that an inmate
11:44:38 in their facility, Matthew Roach, claimed to have heard
11:44:41 another inmate, Charles Bliss, talking about the location
11:44:45 of Heidi Allen's body. Sheriff's investigators interviewed
11:44:49 Roach on April twenty-third, 2013 and took a written
11:44:52 statement from him. On April twenty-third, 2013, sheriffs
11:44:57 investigators also interviewed Charles Bliss and obtained a
11:45:01 written statement from him. During the interview, police
11:45:04 claimed that he was shown the location of Heidi Allen's
11:45:07 body over twenty years ago after high school but before he
11:45:10 went in the Navy in 1991. If his timeline is correct, his
11:45:16 claimed observation of Heidi Allen's body preceded her
11:45:18 disappearance by approximately three years. As such, it
11:45:21 appears that Mr. Bliss does not have reliable information."
11:45:26 Then he goes on to state that, "Nevertheless, attached
11:45:31 Exhibit 4 are copies of following documents. One,
11:45:33 handwritten notes of Oswego County Sheriff's Deputy J.

11:45:37 Burke. Two, inmate letter from Matthew Roach along with
11:45:40 cover letter from Onondaga County Chief ADA Rick Trunfio.
11:45:45 Three, statement of Matthew Roach dated 4/23/13. Four,
11:45:50 statement of Charles Bliss dated 4/23/13. Five, drawing
11:45:56 slash diagram made by Charles Bliss 4/23/13." And that's
11:46:03 the items that were attached.

11:46:05 **Q.** All right, so after you received this packet of
11:46:07 information from Mr. Oakes, did you have a conversation
11:46:09 with him?

11:46:10 **A.** Well, I -- I called at least once or twice. This
11:46:16 was within a month or so of receiving this because I wanted
11:46:19 to know the area that they searched looking for Heidi
11:46:25 Allen's body as referenced in Tonya Priest's statement.

11:46:30 **Q.** Was there a conversation with regard to Tonya
11:46:34 Priest?

11:46:35 **A.** The conversation with regards to Tonya Priest was
11:46:38 that Mr. Oakes said that she -- in his opinion, she was not
11:46:44 credible and that she wasn't a credible witness.

11:46:51 **Q.** So once you received this packet of information,
11:46:53 what did you do with it?

11:46:56 **A.** Well, I began -- on my own time, I began to review
11:47:01 all of this information, and there was a lot of information
11:47:04 to review.

11:47:05 **Q.** All right, I'm going to refer you -- there were
11:47:07 several audio recordings that were attached to the packet

11:47:11 of information you received.

11:47:13 **A.** Yes.

11:47:14 **Q.** And you indicated that there was an audio phone call
11:47:17 regarding between Tonya Priest and Jennifer Wescott?

11:47:21 **A.** Yes.

11:47:21 **Q.** And also there was an interview of Jennifer Wescott
11:47:25 by Investigator Pietroski?

11:47:27 **A.** Yes.

11:47:28 **Q.** And what did you do with those items when you
11:47:30 received them?

11:47:30 **A.** Well, first I listened to the call, and then I
11:47:37 watched the videotape, and I noticed that they were very
11:47:40 much at odds so I -- I then started going line by line with
11:47:45 what the phone interview between Tonya Priest and Jennifer
11:47:50 Wescott, what they said during the phone interview, and
11:47:53 then I went line by line to what Jennifer Wescott said to
11:47:58 Investigator Pietroski.

11:48:00 **Q.** And did you create anything in connection with your
11:48:06 efforts to make a comparison between the audio and what you
11:48:09 saw during the video interview?

11:48:12 **A.** Yes. We did at our office, we created basically a
11:48:19 line by line comparison between the two.

11:48:23 **Q.** And do you have that DVD in the courtroom here? Do
11:48:27 you have that CD in the courtroom?

11:48:29 **A.** I believe you have it here today.

11:48:31 MS. PEEBLES: I would ask to play Exhibit 85 unless there's an objection by the People.

11:48:38 THE COURT: Any objection?

11:48:38 MR. OAKES: Can I have a moment, Your Honor?

11:48:42 THE COURT: Sure.

(Whereupon, there was a pause in the proceeding).

11:49:04 THE COURT: Ms. Peebles, approximately how long is this videotape?

11:49:10 MR. OAKES: I'm sorry?

11:49:11 THE COURT: Ms. Peebles, approximately how long is this videotape?

11:49:15 MS. PEEBLES: It's fifteen minutes, Judge. It was a combination in order to condense the information.

11:49:20 THE COURT: Okay, Mr. Oakes, do you want to approach please?

11:49:22 MR. OAKES: Yes.

11:49:27 (Whereupon, there was an off the record discussion at the bench).

11:54:01 THE COURT: Mr. Oakes and Ms. Peebles, in regard to Exhibit 85, Mr. Oakes, do you consent to Exhibit 85 being moved in?

11:54:07 MR. OAKES: I consent to it being received by the Court.

11:54:10 THE COURT: Received at this point.

(Defendant's Exhibit No. 85 was received in evidence).

11:54:10 THE COURT: The question is whether or not we're going to listen to it.

11:54:13 MR. OAKES: Correct.

11:54:13 THE COURT: Or watch it. The Court will reserve decision on that issue until we return from our -- from lunch. Ms. Peebles, any problem with that?

11:54:22 MS. PEEBLES: No problem.

11:54:24 THE COURT: Mr. Oakes, any problem with that?

11:54:25 MR. OAKES: No, Your Honor.

11:54:26 THE COURT: It is now five minutes to twelve. We're now going to recess till one o'clock. I know you have a concern regarding Judge Fahey.

11:54:33 MS. PEEBLES: I think we'll be okay, Judge.

11:54:43 (Whereupon, there was a recess.)

12:57:26 THE COURT: Mr. Oakes and Ms. Peebles, please approach.

12:58:36 (Whereupon, there was an off the record discussion at the bench.)

12:59:25 THE COURT: We are back on the record with regard to 440 motion of Gary Thibodeau. Prior to breaking for lunch, Ms. Peebles, you requested that the Court allow the playing of Exhibit 85. At that time Mr. Oakes objected to the playing of it but consented

12:59:42 to its admission. Is that correct, Mr. Oakes?
12:59:44 MR. OAKES: That is correct, Your Honor.
12:59:45 THE COURT: Under the circumstances as
12:59:47 explained by Ms. Peebles, the Court will allow it to be
12:59:49 played so the witness can explain why certain things
12:59:52 were done. I believe it would assist the Court in the
12:59:55 Court's ultimate review of it as well so go ahead.
01:00:03 (Whereupon, Exhibit No. 85 is played).
01:21:28 **Q.** All right, now, Ms. Bianco, you prepared that
01:21:32 comparison?
01:21:33 **A.** Yes. I was part of the comparison, yes.
01:21:35 **Q.** And what was your purpose in making that comparison
01:21:39 as far as advancing the investigation?
01:21:42 **A.** Well, I was originally told by Mr. Oakes that Tonya
01:21:48 credible -- Tonya Priest was not a credible witness, and
01:21:52 when I listened to the tape and made the comparison, I -- I
01:21:57 found that it was Jen Westcott that wasn't credible so I
01:22:00 wanted to go line for line and see where the differences
01:22:04 were and to see what I actually had in my possession.
01:22:07 **Q.** So as far as what you decided to do as far as
01:22:11 investigative efforts, can you explain to the Court exactly
01:22:14 what was one of the first things that you did?
01:22:16 **A.** Yes. I met with our chief investigator in the
01:22:20 office and I had asked him if he would help me out on this
01:22:24 because it was really troubling to me, but I had received a

01:22:28 letter from Mr. Oakes, and at the bottom it talked about
01:22:32 keeping the investigation confidential because it was
01:22:35 ongoing and I didn't want to interfere with it, so I wanted
01:22:38 to see if there was something we can do to corroborate the
01:22:42 information he gave us. I spoke to Mr. Haumann, our chief
01:22:47 investigator, and he said he reviewed the materials and
01:22:51 said that we should probably run a DMV search on the
01:22:56 suspects to see if anyone had a van that matched the
01:22:59 description of the van that Heidi Allen was abducted in.
01:23:04 We also talked about the location of where Heidi Allen may
01:23:11 be buried because Tonya Priest gave some directions, and
01:23:15 when I had spoken to Mr. Oakes, he had told me that the
01:23:18 area was too vast to perform a search, it wasn't specific
01:23:23 enough, so he went out and made some drive-bys around that
01:23:27 area just to determine what place we may be looking for, if
01:23:32 there's a cabin there or not.

01:23:34 THE COURT: Who is he?

01:23:34 THE WITNESS: Mr. Haumann.

01:23:36 **Q.** And were efforts undertaken to locate a cabin?

01:23:42 **A.** Yes.

01:23:43 **Q.** And do you recall when that was?

01:23:46 **A.** Well, I know that when we talked about it the ground
01:23:52 was frozen and it was a lot of snow, so he wanted to wait
01:23:56 until the ground thawed out, but I know he did some -- he
01:24:01 looked in the fall of 2013 and he was back out in the

01:24:03 spring of 2014.

01:24:08 **Q.** And as a result of searching through the woods, did
01:24:15 Mr. Haumann locate a cabin?

01:24:17 **A.** Well, eventually a -- not initially, no, but
01:24:20 eventually a cabin was located.

01:24:22 **Q.** And do you recall when the first time was that he
01:24:26 actually located a cabin?

01:24:28 **A.** I believe it was either June or July of 2014.

01:24:34 **Q.** And were you ever present with Mr. Haumann when he
01:24:38 was searching for the cabin?

01:24:40 **A.** One time I was.

01:24:41 **Q.** In addition, when listening to the comparison, was
01:24:49 there a concern regarding Wescott's statement about junking
01:24:55 the van?

01:24:57 **A.** Well, the concern was in her statement to Tonya
01:25:02 Priest on the phone, she was part of it, and her statement
01:25:07 to Investigator Pietroski she didn't know what in the world
01:25:11 he was talking about.

01:25:12 **Q.** Do you know whether Tonya Priest ever mentioned
01:25:15 anything about junking a van in her disclosures to the
01:25:20 prosecutor?

01:25:22 **A.** I don't believe she did mention junking a van.

01:25:26 **Q.** Was there ever any conversation during the audio
01:25:29 phone call that you listened to when you were making the
01:25:32 comparison, was there ever any mention concerning

01:25:35 Murtaugh's junkyard during that audio recording?

01:25:39 **A.** No, not by Tonya.

01:25:41 **Q.** When was the first time Murtaugh's junkyard came to the forefront?

01:25:49 **A.** I believe that came to the forefront when she was being -- she, Ms. Wescott, was being interviewed by Investigator Pietroski and suddenly she's talking about how she texted this -- this guy out of the blue.

01:26:20 MS. PEEBLES: I have no further questions, thank you.

01:26:21 THE COURT: Mr. Oakes, Mr. Moody?

01:26:25 CROSS-EXAMINATION

01:26:25 BY MR. MOODY:

01:26:26 **Q.** Good afternoon, Ms. Bianco.

01:26:57 **A.** Good afternoon, Mr. Moody.

01:26:58 **Q.** You mentioned that you had gotten involved in the case regarding Gary Thibodeau after the trial was over and in order to help out with post-conviction work?

01:27:16 **A.** Yes, yes.

01:27:17 **Q.** And you mentioned that the first thing you did was 330 motion regarding a diary.

01:27:27 **A.** Yes.

01:27:27 **Q.** Among other things.

01:27:29 **A.** Yes.

01:27:29 **Q.** But regarding a diary. And you mentioned that the

01:27:33 judge at one point reviewed it and that -- and that the --
01:27:49 your concern was that the diary now may have information
01:27:53 that related to the current information that we are
01:27:57 discussing here, is that accurate?

01:27:59 **A.** I'm not sure if I follow the question.

01:28:02 **Q.** You mention that you're concerned about why you
01:28:04 brought the diary up this time and why you wanted
01:28:06 everything to be reviewed was that the diary -- you felt
01:28:12 that Judge Clary may have reviewed it for improper
01:28:17 information, is that accurate?

01:28:18 **A.** No, that's not accurate.

01:28:20 **Q.** Why -- why then is the diary important here today?

01:28:23 **A.** Well, if the diary mentions the people who she was
01:28:29 associating with back then, and some of those people were
01:28:32 suspected drug dealers, they would become obvious suspects,
01:28:36 but we had no way of telling Judge Clary to look for that
01:28:40 or to even point him in that direction because we didn't
01:28:43 know she was an informant.

01:28:44 **Q.** Well, we'll discuss that in a minute, but you
01:28:47 mentioned that you didn't know what Judge Clary pointed.
01:28:54 Judge Clary read the documents, is that correct?

01:28:57 **A.** He said he read the diary. He took about forty-five
01:28:59 minutes, yes.

01:29:00 **Q.** Well, and then he -- he -- thereafter, you mentioned
01:29:04 it was another 440 motion that was issued later, or that

01:29:08 was done later and then a decision was issued then.

01:29:11 **A.** Yes.

01:29:11 **Q.** Sometime in January of ninety-seven.

01:29:13 **A.** Yes.

01:29:13 **Q.** And in January of ninety-seven, there was a
01:29:17 discussion in that decision about Heidi's diaries, is that
01:29:21 accurate?

01:29:23 **A.** A decision by Judge Clary December of ninety-seven?

01:29:27 **Q.** Yes.

01:29:27 **A.** I don't -- I don't --

01:29:28 **Q.** No, January of ninety-seven, I'm sorry.

01:29:31 **A.** I -- I believe that Judge Clary denied our request
01:29:35 to review the diary.

01:29:37 **Q.** I'm not -- I'm not talking about your request to
01:29:39 review the diary, I'm talking about there was a discussion
01:29:42 in the decision about the diary, is that accurate?

01:29:43 **A.** I believe so.

01:29:45 MR. MOODY: Can I get this marked?

01:29:46 (People's Exhibit A was marked for
01:30:44 identification).

01:30:44 **Q.** I'm going to show you what's been marked People's A
01:30:48 which is going to mess me up all during the hearing, but do
01:30:52 you recognize that?

01:30:52 **A.** This is Judge Clary's decision and order dated
01:30:56 January six, 1997.

01:30:57 **Q.** And that is on the 440 motion that you subsequently made after Mr. Thibodeau was sentenced, is that accurate?

01:31:06 **A.** Yes.

01:31:06 **Q.** And if you can, would you read -- and that is a full and complete copy as far as you remember?

01:31:14 **A.** I haven't looked at it in quite a while but it looks complete.

01:31:20 **Q.** Can I have it back?

01:31:22 **A.** Certainly.

01:31:26 MR. MOODY: Judge, showing Exhibit A to defense counsel, I would move to admit.

01:31:31 MS. PEEBLES: I have no objection to take judicial notice of all the prior proceedings.

01:31:35 THE COURT: Yes. I'll take judicial notice of that proceeding, of that decision.

01:31:39 (People's Exhibit A was received in evidence).

01:31:39 **Q.** Could you read the last full sentence of the first page please?

01:31:43 **A.** Certainly. "There were not diaries in the usual sense in that they referred only to her daily activities with Brett Law. As such --"

01:31:54 **Q.** The last full sentence, the last full sentence.

01:31:57 **A.** Did I finish it?

01:31:58 **Q.** Yeah. So Judge Clary determined that there was

01:32:05 nothing in those diaries other than her activities with her

01:32:08 boyfriend Brett Law.
01:32:12 **A.** That's not what he said in chambers during the
01:32:14 330.30 motion. That is not what he said. That's what he
01:32:18 said at the decision of the 440 motion, but that's not what
01:32:21 he said in chambers.

01:32:23 **Q.** So Judge Clary contradicted himself.

01:32:25 **A.** He didn't contradict himself, he was more expansive
01:32:28 in chambers saying that it was her day to day activities of
01:32:33 1993 and 1994, what she did, where she went, and he
01:32:40 referenced some intimate things between her and Brett Law
01:32:44 but he didn't tell us specifically what.

01:32:45 **Q.** But in the decision he said only referred to, is
01:32:50 that fair?

01:32:50 **A.** Yes.

01:32:51 **Q.** Now, you -- you mentioned that you had the
01:32:57 opportunity to go through both Richard's trial file,
01:33:02 Richard Thibodeau's trial file, and -- well, you have
01:33:08 possession of Gary Thibodeau's trial file, is that
01:33:11 accurate?

01:33:11 **A.** Yes.

01:33:11 **Q.** From both defense attorneys I assume.

01:33:13 **A.** Yes.

01:33:13 **Q.** And who was Richard Thibodeau's trial attorney?

01:33:16 **A.** William Walsh.

01:33:17 **Q.** And I assume in your twenty some odd years of

01:33:22 practicing you've met now Judge Walsh, former Judge Walsh?
01:33:25 **A.** Absolutely.
01:33:26 **Q.** Now, you mentioned that in the course of your
01:33:31 representation of him you did among other things his direct
01:33:35 appeal.
01:33:35 **A.** I did.
01:33:36 **Q.** And in his direct appeal, you prepared among other
01:33:41 things the record on appeal, is that accurate?
01:33:44 **A.** I did.
01:33:45 **Q.** And the December eighth, ninety-four transcript was
01:33:52 part of that record on appeal, it was the motion argument,
01:33:55 is that correct?
01:33:55 **A.** Yes, it was.
01:33:56 **Q.** And I would assume then you thoroughly reviewed
01:34:00 that.
01:34:00 **A.** I did, yes.
01:34:01 **Q.** And in there it is quite clear, there is a mention
01:34:05 of Sergeant Lortie's report detailing that Heidi Allen was
01:34:10 a confidential informant.
01:34:12 **A.** That -- well, that's not exactly accurate. There
01:34:16 was a motion argument about whether or not Heidi Allen was
01:34:20 a confidential informant. I believe the now Judge Fahey
01:34:25 was asking specifically about that, that he had reviewed a
01:34:30 report that Billy Walsh had received. I never saw that
01:34:35 initial report, it was not in his file, but there was a

01:34:38 reference to whether or not she was a confidential
01:34:40 informant during that motion argument, yes.

01:34:44 **Q.** Judge Fahey says in this motion argument, "I would
01:34:50 note that there was a report disclosed to Mr. Walsh which
01:34:54 indicates that the victim in this case was at some previous
01:34:57 time working as a confidential informant for the Sheriff's
01:35:01 Department several years previously," is that accurate?

01:35:04 **A.** That was the basis of the argument and the District
01:35:09 Attorney's Office was basically denying it.

01:35:11 **Q.** Now, in the course of your career as an attorney, I
01:35:21 assume you become aware that words mean different things to
01:35:25 different people.

01:35:26 **A.** Sometimes.

01:35:27 **Q.** So now would you agree with me that there are
01:35:31 different types of informants in a confidential -- there's
01:35:35 the type that goes out and does a drug buy, there's the
01:35:39 kind that provides information that they know but they
01:35:42 don't want their name used, is that accurate?

01:35:46 **A.** Yes.

01:35:47 **Q.** Okay, sometimes referred to as background
01:35:49 information or that kind of thing.

01:35:52 **A.** That's not what I would perceive as a confidential
01:35:54 informant, no. Someone who gives background information
01:35:57 versus someone telling on people, two different things.

01:36:00 **Q.** So -- so that's what you would refer to as

01:36:04 confidential informant. Other people could refer to that as a confidential informant if they didn't want their names used.

01:36:11 **A.** I suppose.

01:36:12 **Q.** Now, you mentioned that in reviewing this, that the first time you had seen any information on Heidi being a confidential informant was the -- when you reviewed Richard's trial box or trial file.

01:36:35 **A.** That's the first time I saw a report. It wasn't the first time I've heard that she was possibly an informant, that was in the December eighth argument. The first time I actually saw a report was in the Richard Thibodeau file.

01:37:21 MR. MOODY: Judge, at this point I'm going to move and ask that -- I'm going to ask that this be marked. This is Defense Exhibit 6, Judge, and I believe by stipulation this will be admitted.

01:38:29 MS. PEEBLES: Yes.

01:38:44 THE COURT: Exhibit 6 will be moved in based upon the stipulation of the parties.

01:38:48 MR. MOODY: Yes.

(Defendant's Exhibit No. 6 was received in 01:38:52 evidence).

01:38:52 **Q.** And showing you Exhibit 6, if you could turn to page thirty-one of that, let me know when you get there.

01:39:08 **A.** I'm at page thirty-one but I haven't read it.

01:39:10 **Q.** Go ahead and read it, I just --

01:39:13 (Whereupon, there was a pause in the proceeding.)

01:39:34 **A.** I've read it.

01:39:35 **Q.** Okay. And in that, Sergeant Lortie specifically referred to, I believe his name is actually misspelled, is that accurate?

01:39:43 **A.** Yes.

01:39:43 **Q.** So it's clear what everyone is talking about is this Sergeant Lortie report, accurate?

01:39:49 **A.** It's clear that there is a report by Sergeant Lortie. I never saw it.

01:39:54 **Q.** So but obviously at this point in time Judge Fahey had seen it.

01:40:00 **A.** I assume so by the reading of the transcript, yes.

01:40:04 **Q.** Now, what was your understanding of the relationship between Judge Walsh and Judge Fahey when they were defending the Thibodeau brothers?

01:40:14 **A.** Well, each was acting independently. Judge Walsh was defending Dick Thibodeau, Joe Fahey was defending Gary Thibodeau, and Judge Walsh sat in on the trial of Gary Thibodeau and I'm just assuming so he could be prepared for Richard Thibodeau's trial, but no -- no other relationship that I know of.

01:40:36 **Q.** Well, they were -- it's obvious from the December

01:40:40 eighth transcript that they were sharing information and reports.

01:40:43 **A.** It's obvious that they shared that particular bit of information. I don't know to what extent. I wasn't present and I wasn't involved in the case at that time.

01:40:51 **Q.** When you -- when you did the appeal, did you check to see at any point in time whether or not -- well, let me ask you this. When did you become in possession of Gary's trial -- Gary's file?

01:41:15 **A.** I believe it was sometime after the notice of appeal was filed, but I can't be certain, and we didn't have the transcript at that point. That would be Judge Fahey's -- some boxes, but we were kind of sharing the boxes because he was still involved in the case at that point.

01:41:57 MR. MOODY: Do you have Exhibit 4?

01:41:59 MS. PEEBLES: Exhibit 4, yep.

01:42:05 **Q.** Now, showing you what's been marked as exhibit --

01:42:18 MR. MOODY: Well, Judge, this is Defendant's Exhibit 4 which I believe is going to be admitted by stipulation?

01:42:22 MS. PEEBLES: Yes.

01:42:22 THE COURT: Post-Standard article?

01:42:24 MR. MOODY: Yes.

01:42:25 **Q.** Showing you Defendant's Exhibit 4, if you could review that.

01:42:30 **A.** Certainly.
01:42:33 THE COURT: Defendant's Exhibit 4 is in based
01:42:35 upon the stipulation.
01:42:36 MS. PEEBLES: It is.
01:42:37 MR. MOODY: Yes.
(Defendant's Exhibit No. 4 was received in
01:42:53 evidence).
01:42:53 (Whereupon, there was a pause in the
01:44:20 proceeding.)
01:44:20 THE COURT: Okay.
01:44:21 **Q.** Now -- now, in Exhibit 4, Judge Fahey is speaking
01:44:27 with or has spoken with the newspaper reporter, Ms.
01:44:32 Grassman, is that accurate?
01:44:34 **A.** Speaking with -- I'm sorry, can you repeat the
01:44:36 question?
01:44:36 **Q.** Well, Ms. Grassman is a newspaper reporter.
01:44:40 **A.** Yes.
01:44:40 **Q.** And she is apparently quoting or referring to that
01:44:44 conversation she had with Judge Fahey, is that accurate?
01:44:47 **A.** I don't know if this was a conversation she had with
01:44:49 Judge Fahey or if she was reporting what happened during
01:44:52 the motion argument. I'm not sure.
01:44:54 **Q.** Well, what's the date on the newspaper article?
01:44:56 **A.** The date on the newspaper article is December
01:44:58 seventh.

01:44:58 **Q.** And what's the date of the motion argument?

01:45:00 **A.** The date of the motion argument I believe is December eighth but the motion was filed before December seventh. This was in the Omnibus motion where he made the request.

01:45:11 **Q.** So now giving you back --

01:45:30 **A.** Did you want this back?

01:45:31 **Q.** Yes. Thank you. Giving you back Defendant's Exhibit 6, if you go back to page thirty-one again for a moment.

01:45:40 **A.** Yes.

01:45:41 **Q.** Actually start at thirty.

01:46:01 **A.** Yes.

01:46:02 **Q.** In that motion argument, Judge Fahey says that he just discovered that report the day before, is that accurate?

01:46:14 **A.** Yes, but I believe it's in his Omnibus motion where he's asking for the same materials and that's -- predates this.

01:46:21 **Q.** He's asking for what materials?

01:46:22 **A.** I believe there was something he referenced -- the words I remember from the Omnibus motion is something like if she was an informant or -- something about manna from heaven, that just sticks out in my mind, that was in the paperwork, but he talked about whether or not she was an

01:46:40 informant in the Omnibus motion, and I think he was saying
01:46:44 that she wasn't an informant. I believe that's what was
01:46:50 said in the Omnibus motion and that was filed before and
01:46:53 then all this discussion comes up.

01:46:54 **Q.** Okay, back up for a second.

01:46:55 **A.** Um hum.

01:46:56 **Q.** You said he said she wasn't an informant. Who are
01:47:00 your referring to?

01:47:00 **A.** In the motion, Judge Fahey said something about that
01:47:03 he didn't believe that she was an informant, if I'm
01:47:05 remembering correctly, and if I saw the Omnibus motion I
01:47:08 would remember if you have it and want to show it to me.

01:47:11 **Q.** Well, I think it's --

01:47:16 THE COURT: It's Exhibit 3 isn't it?

01:47:19 MR. MOODY: Yes, I believe so. Is it Exhibit
01:47:22 3?

01:47:22 MS. PEEBLES: Actually I don't think that's
01:47:23 the right motion.

01:47:26 THE COURT: Is that a different Omnibus?

01:47:31 MS. PEEBLES: I believe there was a number
01:47:32 of -- what she's referencing was another proceeding. I
01:47:37 don't think it's in here but you can look. I have it.

01:47:40 THE COURT: Okay. Mr. Moody, do you want to
01:47:42 look?

(Whereupon, there was a pause in the

01:49:09 proceeding).

01:49:09 **Q.** Showing you Exhibit 3, review that, that is --

01:49:18 MR. MOODY: Well, move to admit that pursuant
01:49:20 to stipulation.

01:49:21 MS. PEEBLES: I don't know if that's part of
01:49:23 the stipulation but I have no objection.

01:49:24 THE COURT: No objection?

01:49:26 MR. MOODY: Same.

01:49:27 THE COURT: Three is moved in.

(Defendant's Exhibit No. 3 was received in
01:49:32 evidence).

01:49:32 THE COURT: You made reference to a specific
01:49:34 page, Mr. Moody. What page?

01:49:36 MR. MOODY: Page ten.

01:49:40 **A.** I -- I see where I'm referencing it, it would be on
01:49:45 pages -- typed written page nine and typed written page
01:49:51 ten. It would start at paragraph eighteen, and that's
01:49:57 where Judge Fahey is talking about the extensive publicity
01:50:03 surrounding the investigation into this matter, and it is
01:50:05 reasonable to believe that the Grand Jury heard testimony
01:50:08 and read in the indictments based upon facts which occurred
01:50:12 and which are ostensibly reported in print, audio, video
01:50:17 media just prior or during empanelment. Paragraph
01:50:21 nineteen, "That upon information and belief, the media
01:50:23 reports were loosely based upon conferences and/or

01:50:26 interviews with purported witnesses and police who
01:50:28 assisted, conveyed or inferred factually incorrect
01:50:32 renditions of events, facts, circumstances and associates."
01:50:38 Paragraph twenty. "For instance, a substantial number of
01:50:41 media counts asserted by way of multiple hearsay obtained
01:50:44 from prosecution witnesses and police sources that the
01:50:48 defendant, Gary J. Thibodeau, was involved in drug dealing
01:50:51 which was the apparent imputed motive for the abduction
01:50:55 which allegedly occurred and which forms the basis of
01:50:58 counts one and two, when in fact the defendant's sole
01:51:02 conviction for any drug offense was a misdemeanor charge in
01:51:06 the State of Massachusetts, and the victim, Heidi Allen,
01:51:08 was not and never has been an informant for local law
01:51:12 enforcement authorities despite the fact both the police
01:51:15 and the prosecutors were aware of this, was the true state
01:51:20 of facts, they planted, fostered the affirmations,
01:51:24 accounts, and deemed even characterizing these allegations
01:51:27 manna from heaven." And then --

01:51:30 **Q.** That's fine. We're there. Now, you're -- so
01:51:38 sometime between then January -- or excuse me, December
01:51:43 fifth, or actually I think the date on that is November
01:51:47 twenty-first is when it was filed, yes, November twenty-
01:51:55 first of ninety-four, and December eight, seventh, Roy
01:52:00 Lortie's report has come into the possession or has been
01:52:03 viewed at least by Judge Fahey, is that accurate?

01:52:06 A. It appears to be, yes.

01:52:08 Q. And at any point in time during your time as his
01:52:12 appellate counsel, did you make an effort to look for this
01:52:17 report referenced in the December eighth?

01:52:20 A. I went through the entire box which was several,
01:52:24 probably --

01:52:25 Q. Specific --

01:52:25 A. Maybe five boxes.

01:52:27 Q. What I'm asking you is specifically did you go and
01:52:30 look for this report of Roy Lortie that is referenced in
01:52:35 the December eighth motion argument?

01:52:38 A. I did not look for it, but I did not find it 'cause
01:52:41 I reviewed the file.

01:52:43 Q. And at no point in time then between December, or
01:52:49 excuse me, well, whenever you took over his representation,
01:52:54 did you file a motion saying we didn't get this report
01:52:57 that's referenced in December, on December eighth, until
01:53:01 June or July of 2014?

01:53:03 A. No because nothing more was ever came of it. There
01:53:08 was no further reports, there was no more discusses on the
01:53:11 record, it appeared to be a non-issue for purposes of
01:53:14 appeal based on the fact that there were no other reports
01:53:18 in the file and no other mention in the trial transcripts
01:53:22 or anywhere else.

01:53:25 Q. You just told us that Judge Fahey was worried about

01:53:29 the -- you just read to us that Judge Fahey was worried
01:53:34 about the fact that Gary's alleged drug dealing was being
01:53:38 imputed as the motive, accurate?
01:53:41 **A.** That's what Joe Fahey wrote and he wrote and
01:53:45 thought.
01:53:45 **Q.** Did he write that?
01:53:46 **A.** Yes.
01:53:47 **Q.** Okay, now you just told us that on December eighth
01:53:51 he sees a report that says that Roy Lortie says she was a
01:53:56 confidential informant.
01:53:57 **A.** Yes.
01:53:58 **Q.** And you know that therefore that according to this,
01:54:02 this November twenty-first motion, that that's important,
01:54:08 and in all the time you have represented him, you've never
01:54:12 once thought that her being a confidential informant was
01:54:15 important then?
01:54:16 **A.** I thought it was important but it never panned out
01:54:19 so I disregarded it because it wasn't an issue on appeal.
01:54:23 **Q.** Did you ever ask Judge Fahey about it?
01:54:25 **A.** I don't recall if I did or not.
01:54:26 **Q.** Now, you mentioned that you had an opportunity to
01:54:42 review at the Sheriff's Department the evidence that
01:55:00 contains among other things but the planner and other
01:55:03 things, is that accurate?
01:55:04 **A.** Yes.

01:55:04 MR. MOODY: Okay, can I get that marked?

01:55:06 (People's Exhibit B was marked for identification).

01:55:44 **Q.** Showing you what's been marked as People's Exhibit
01:55:47 B.

01:55:48 **A.** Yes.

01:55:48 **Q.** Have you seen that before?

01:55:51 **A.** I saw this at the Sheriff's Department, and I
01:55:56 thought that this 1993 planner was actually the diary at
01:56:01 first until I was corrected.

01:56:02 **Q.** Now you mentioned that in there you saw something
01:56:17 that you referred to as her confidential informant card.

01:56:21 **A.** Yes, yes.

01:56:31 **Q.** Open --

01:56:32 MR. MOODY: Well, showing to defendant
01:56:39 People's Exhibit B, to defense counsel, Judge, I would
01:56:42 move to admit.

01:56:44 MS. PEEBLES: No objection.

01:56:45 THE COURT: B is in.

01:56:59 (People's Exhibit B was received in evidence).

01:56:59 **Q.** Could you show us what you're referring to when you
01:57:01 say that?

01:57:02 **A.** About the informant card?

01:57:04 **Q.** Yes, please.

01:57:05 **A.** Here's the picture. What you say in the

01:57:16 prosecution's motion response was a photocopy, and I don't know if you put it all together or not, but what was contained in the photocopy was this card, Heidi Allen card, this picture and this Sheriff's card, and then there was -- I don't see the finger -- oh, here's the fingerprints on the back, that was in a photocopy version of something that you gave to us in a motion response.

01:57:45 **Q.** Sure, but when you had an opportunity to review it in the Sheriff's Department, this was in there as well.

01:57:50 **A.** Yes.

01:57:50 **Q.** Could you tell us where on any of these items it says anything about confidential or informant?

01:57:55 **A.** Well, it does not say confidential informant, it said code name, which to me, working secretly, deputy working with, I mean it was --

01:58:11 **Q.** I asked you a specific question if you could kind of answer it for me.

01:58:14 **A.** It doesn't say confidential informant.

01:58:17 **Q.** It doesn't say anything about confidential informant.

01:58:19 **A.** No.

01:58:19 **Q.** All right, thank you. Now there were other items in that, correct?

01:58:22 **A.** Yes.

01:58:23 **Q.** And some of these other items had nothing to do with

01:58:33 Ms. Allen's status or whatever as being a confidential informant, is that accurate?

01:58:39 **A.** I honestly don't know if it did or not.

01:58:43 **Q.** Well, let's if I can --

01:58:45 **A.** Jim Crunk (ph), CR6, I don't know if that has anything to do with it.

01:58:51 **Q.** Well, may I -- why don't you hand me -- hand me them all.

01:58:58 **A.** Oh, sorry.

01:59:00 **Q.** Now, I assume at some point in time you've had an opportunity to review the trial transcript in this matter in preparing for appeal, is that correct?

01:59:07 **A.** Yes.

01:59:07 **Q.** And do you recognize the name David Stinson (ph)?

01:59:12 **A.** Yes.

01:59:13 **Q.** And who is Mr. Stinson?

01:59:15 **A.** I believe he was -- he was one of the witnesses -- I can't recall, I don't know if he was one of the people who was at the D & W at the time or one of the customers, I believe he was, but I'm not quite sure.

01:59:27 **Q.** Well, if I told you that he was the individual that came in to the store and found it empty, would that seem about right?

01:59:36 **A.** Yes.

01:59:36 **Q.** Now, if you recollect from Mr. Stinson's testimony, 01:59:47 he was on his way to Nine Mile plant where he worked to work out, does that sound about right?

01:59:52 **A.** I honestly don't know.

01:59:53 **Q.** If I were to show you trial transcript would that refresh your recollection?

01:59:58 **A.** I'm sure it would.

01:59:58 MR. MOODY: Judge, at this point in time the People have the trial transcript with us. Probably make sense at this point in time to move the whole trial transcript into evidence.

02:00:06 MS. PEEBLES: The Court can take judicial notice of the entire transcript.

02:00:10 THE COURT: I'll take judicial notice. Do you have a transcript to refresh her recollection?

02:00:14 MR. MOODY: Yes.

02:01:03 **Q.** Starting at page thirteen ninety-five, could you go about six or seven pages in, just review that to yourself and let me know if that refreshes your --

02:01:32 MR. MOODY: Do we want to mark this or just take judicial notice?

02:01:36 THE COURT: Just take judicial notice. Just did you say six or seven pages, Mr. Moody?

02:01:40 MR. MOODY: First six or seven, yeah.

02:02:26 **A.** How far do you want me to go?

02:02:28 **Q.** Just six or seven pages. There's a point where I

02:02:31 believe he talks about going to exercise?
02:02:33 **A.** I finished it, yes.
02:02:34 **Q.** So it appears that Mr. Stinson was going -- does
02:02:38 that refresh your recollection?
02:02:39 **A.** To be honest, not particularly, but it's in the
02:02:43 transcript so it's obviously -- it -- the person testified
02:02:45 to that, yes.
02:02:46 **Q.** So the notes that are in this bag, it would seem
02:02:52 there's some notes here accurate about someone going to
02:02:57 Nine Mile to work out?
02:03:00 **A.** Yes.
02:03:01 **Q.** So fair to say that not everything here is -- that
02:03:04 would seem to relate more than to notes of someone on the
02:03:08 scene speaking with Mr. Stinson at that time, is that
02:03:13 accurate?
02:03:14 **A.** This piece of paper would appear to be that, yes.
02:03:15 **Q.** And if you remember from Investigator Kleist report,
02:03:20 he said he found a number of pieces of paper that were
02:03:23 at -- that were originally given -- put together at the
02:03:27 fire hall or the town -- the fire hall in New Haven, is
02:03:31 that accurate?
02:03:33 **A.** Yes.
02:03:33 **Q.** Now --
02:03:41 **A.** Did you want this?
02:03:42 **Q.** Oh, yes, thank you. Now you mentioned that when

02:03:47 you -- when you were at the -- the sentencing of Mr. Thibodeau and the issue of the diaries came up, that -- that Judge Clary was given I believe in your words a thick packet, is that accurate?

02:04:11 **A.** Yeah. It looked like two thick packets with one of those like clips around it, but they were together. I never actually got to see them, and he said they were photocopies of the -- as he called it diary slash planner.

02:04:27 **Q.** And there were a number of -- but you described it as thick. Would you describe the planner, or this document, the Yale document, from exhibit -- People's Exhibit B as thick?

02:04:39 **A.** I would not describe that as thick, no.

02:04:42 **Q.** Now, turning to Exhibit 35, and just this is -- this is the letter that you received from DA Oakes, is that accurate?

02:05:49 **A.** Yes.

02:05:49 **Q.** Whose photo -- who is copied on that letter?

02:05:55 **A.** Honorable Walter Hafner and Gary J. Thibodeau.

02:05:59 **Q.** And who is Gary J. Thibodeau?

02:06:01 **A.** That would be my client, sir.

02:06:03 **Q.** Now, you said that at one point in time, I'll take that, at one point in time you discussed with DA Oakes keeping the matter confidential.

02:06:13 **A.** Yes.

02:06:13 **Q.** Was your client a participant in that conversation?

02:06:21 **A.** He was not, no.

02:06:21 **Q.** So fair to say by sending your copy -- the copy to
02:06:24 your client, the matter's no longer confidential.

02:06:28 **A.** I thought he sent it to me to send to Gary, but no,
02:06:32 based on the last paragraph of that letter, it was pretty
02:06:36 clear to me at least that this was some kind of an ongoing
02:06:39 investigation. I thought Judge Hafner was copied on
02:06:43 because he had signed the search warrant. That's what Mr.
02:06:45 Oakes told me regarding the phone records.

02:06:47 **Q.** I'm not asking that, okay. That's very nice
02:06:50 explanation. He sent it to your client, correct?

02:06:52 **A.** I don't know if he sent it to my client.

02:06:54 **Q.** He was copied on it.

02:06:55 **A.** He's copied on it, yes.

02:06:58 **Q.** You've asked your client you've seen the letter --
02:06:59 did you ever ask your client did you get a copy of the
02:07:01 letter?

02:07:01 **A.** Yes.

02:07:01 **Q.** And did he say he did?

02:07:03 **A.** He did.

02:07:03 **Q.** So he sent a copy to your client.

02:07:05 **A.** Yes.

02:07:05 **Q.** Okay, thank you. Now, by sending a copy to your
02:07:10 client who is under no obligation to keep any of this

02:07:12 information confidential, would you agree with me that the
02:07:16 matter was no longer confidential?

02:07:17 **A.** I would entirely disagree.

02:07:20 MS. PEEBLES: Objection. Relevance.

02:07:22 THE COURT: Yeah, what is the relevance, Mr.
02:07:23 Moody?

02:07:24 MR. MOODY: Well, Judge, one of the things
02:07:25 that Ms. Bianco has indicated is that she did not --
02:07:30 that she did all of these things on -- with the
02:07:33 diagrams and things all while trying to keep the matter
02:07:36 confidential, and I'm just trying to point out that I
02:07:39 don't know that that's a hundred percent accurate.

02:07:42 MS. PEEBLES: Again, Judge, I don't know the
02:07:44 relevance.

02:07:44 THE COURT: Are you challenging credibility to
02:07:46 her testimony?

02:07:47 MR. MOODY: Yes.

02:07:48 THE COURT: I'll allow it for that limited.
02:07:50 She answered the question.

02:07:51 **Q.** Now all of the items, all of the items listed in
02:08:00 Exhibit 1, they were turned over to you by the District
02:08:05 Attorney's Office, is that accurate?

02:08:06 **A.** Yes.

02:08:08 **Q.** And then they -- they turned over another -- a
02:08:10 number of other items listed as exhibit I believe two that

02:08:14 included some information that had come from the Onondaga County District Attorney's Office, is that accurate?

02:08:19 **A.** Not on Exhibit 2, no. That would be Exhibit 4.

02:08:24 **Q.** Excuse me, Exhibit 4. Didn't have a copy of the letter in front of me. I probably should know better than that. Okay. Yes, you're right, on Exhibit 4, statement and letter of Matthew Roach, statement from Charles Bliss, and some -- a drawing and diagram of Charles Bliss, is that accurate?

02:08:45 **A.** Yes.

02:08:45 **Q.** And none of those names are in this current motion, is that accurate?

02:08:50 **A.** That's correct.

02:08:50 **Q.** Okay. Now, you had mentioned that you had heard rumors at various points about Heidi Allen being a confidential informant I think was what the topic was, is that accurate?

02:09:04 **A.** No, that's not accurate.

02:09:05 **Q.** You had never heard those rumors? What did you say you heard rumors about?

02:09:09 **A.** I didn't hear rumors, I read it in the transcript of December eighth, that's where I saw it, I didn't hear any rumors about her being an informant.

02:09:18 **Q.** Have you ever heard rumors about this case?

02:09:22 **A.** I really don't know. I don't pay attention to

02:09:24 rumors and gossip.

02:09:25 **Q.** Have you ever gotten information that turned out to 02:09:28 be not factually accurate about this case?

02:09:30 **A.** Yes.

02:09:31 **Q.** And now turning now for a little bit to the 02:09:37 discussion that you had with Ms. Peebles about the -- what 02:09:44 you -- what you found to be the inconsistencies with 02:09:51 Jennifer Wescott, is that accurate? You remember this 02:09:56 discussion? There was a whole video and everything?

02:09:58 **A.** I don't understand what the question is.

02:09:59 **Q.** Do you remember the -- do you remember testifying 02:10:02 about all the inconsistencies in that video that you had?

02:10:05 **A.** I remember --

02:10:05 **Q.** That you put together.

02:10:07 **A.** I remember acknowledging the video, yes.

02:10:08 **Q.** Did you -- did you make any kind of video or take 02:10:15 any steps to go through and catalog the inconsistencies of 02:10:21 Ms. Westcott where she indicated that, for example, that as 02:10:26 far as she knew, Gary Thibodeau had killed Heidi Allen?

02:10:31 MS. PEEBLES: Objection. She never said Gary 02:10:33 Thibodeau.

02:10:34 MR. MOODY: All right, the Thibodeaus.

02:10:35 THE COURT: Sustained.

02:10:36 MR. MOODY: She said the Thibodeaus, I 02:10:38 apologize.

02:10:39 **Q.** Did you document any of that?

02:10:41 **A.** No, I did not.

02:10:42 **Q.** Okay. Now, you mentioned that -- now, so you didn't
02:11:30 put any credence to the -- to her statement when asked so
02:11:36 who -- that at eleven minutes, about eleven minutes and
02:11:40 twenty-five seconds into it, "You don't know which one
02:11:44 killed her though." "No idea. As far as I know,
02:11:47 Thibodeau." You didn't put any credence in that, thought
02:11:49 that was an inconsistency?

02:11:51 **A.** That wasn't my purpose in looking at the
02:11:54 inconsistencies.

02:11:56 **Q.** Okay, well, she -- did you also take any steps to
02:12:00 determine her -- whether or not her information and what
02:12:03 she was saying about the case itself and the trial was
02:12:09 accurate? For example, she says just before that, that she
02:12:16 had been subpoenaed to testify for the Thibodeaus.

02:12:20 **A.** Well, that --

02:12:23 **Q.** Do you remember that?

02:12:23 **A.** I remember her saying it. That's why I wanted to
02:12:24 look at Richard Thibodeau's file because I knew she wasn't
02:12:28 part of Gary Thibodeau's case.

02:12:30 **Q.** So she wasn't part of Gary Thibodeau's case.

02:12:32 **A.** Right.

02:12:33 **Q.** Okay. Now, did you ever speak with Judge Walsh and
02:12:44 find out whether or not he had subpoenaed --

02:12:48 **A.** When --

02:12:49 **Q.** -- Gary Thibodeau?

02:12:50 **A.** When we attempted to contact Judge Walsh, he did not want to speak to either side, and I believe he put together an affidavit that he did not want to speak to either side about the case. I know the federal defender reached out to him about that and he did not want to speak to us.

02:13:06 **Q.** Did you -- in reviewing Richard's trial, did you find his witness list?

02:13:09 **A.** I looked at -- I looked -- no, I don't remember if I saw his witness list or not. I might have but I can't be certain.

02:13:16 **Q.** So you assume fair to believe that he did a witness list.

02:13:20 **A.** Of course.

02:13:20 **Q.** Right?

02:13:21 **A.** Of course he did.

02:13:22 **Q.** So -- so fair to -- fair to say then there might not be things in Richard's file that should be?

02:13:28 **A.** There could be things in Richard's file that should be, yes.

02:13:31 **Q.** No, no, no, there might be things missing from Richard's file like a witness list.

02:13:37 MS. PEEBLES: Objection. She said she didn't remember whether there was a witness list.

02:13:41 THE COURT: I'll sustain, but that wasn't the followup question. You're entitled to ask the followup question.

02:13:47 **Q.** Did you see a witness list in his file?

02:13:49 **A.** I don't remember.

02:13:50 **Q.** Where is the file now?

02:13:51 **A.** In our office.

02:13:52 **Q.** Okay, and when was the last time you looked through it?

02:13:57 **A.** It might have been about -- might have been about three or four weeks ago.

02:14:01 **Q.** And so three or four weeks ago you had no interest in finding out whether or not Jennifer Wescott showed up on his witness list?

02:14:10 **A.** All of his files were marked with a person's name and there was no Jennifer Wescott name on any file, so he had everybody individualized, I went through every file, and there was no file for a Jennifer Wescott.

02:14:23 **Q.** Okay, could we answer my question?

02:14:25 **A.** I don't know what the question is.

02:14:27 **Q.** Did you look for the witness list to see if she was on the witness list?

02:14:31 **A.** I don't remember if I did or not. I looked at the files.

02:14:34 **Q.** And you mentioned that his file was arranged by --

02:14:37 by the name of every person that was involved or every name that a person whose name appeared in a -- in a report or something I assume, right?

02:14:44 **A.** It appeared that way, yes.

02:14:45 **Q.** How is Judge Fahey's trial organized?

02:14:50 **A.** The same.

02:14:51 **Q.** The same? And so there was no Jennifer Wescott in either file, is that accurate?

02:14:56 **A.** No Jennifer Wescott.

02:14:57 **Q.** So we can -- can you conclude from that that she was not a potential witness in either Richard or Gary's trial since there was no information on her?

02:15:05 **A.** That's what I thought.

02:15:07 **Q.** Um hum. Now -- now, in the affidavit that you filed at page forty-nine, or excuse me, paragraph forty-nine, page twenty-one, do you need to see it?

02:16:08 **A.** Please.

02:16:09 **Q.** And I'm just going to give you the actual affidavit. The exhibits and everything are a little bulky.

02:16:48 (People's Exhibit C was marked for identification).

02:16:50 **Q.** Now in your affidavit, after paragraph forty-nine, you write that Judge Fahey had never heard about this information prior to our conversation, nor had he seen any report filed by the Oswego County Sheriff's Department

02:17:16 documenting Heidi's activity as an informant.

02:17:20 **A.** I -- I'd need to see that please.

02:17:23 **Q.** Sure. Page twenty-one.

02:17:26 **A.** Page what?

02:17:28 **Q.** Page twenty-one, bottom of the page.

02:17:30 **A.** Paragraph forty-one.

02:17:32 THE COURT: Page twenty-one, paragraph
02:17:34 forty-nine.

02:17:35 THE WITNESS: Thank you.

02:17:51 **A.** Yes.

02:17:52 **Q.** Okay, now, we know that Judge Fahey had in fact seen
02:17:57 prior to that conversation Roy Lortie's report, is that
02:18:03 accurate?

02:18:03 **A.** Prior to my conversation with him, yes.

02:18:06 **Q.** So when you say that he had never seen -- he had no
02:18:10 knowledge of it, or had seen any reports detailing it,
02:18:15 that's not exactly accurate.

02:18:18 **A.** I was talking about the actual card or anything like
02:18:22 that. I mean I knew that he had seen something about it on
02:18:25 December eighth, but it never panned out to anything.

02:18:28 **Q.** Well, did you ask him then to draft an affidavit?

02:18:31 **A.** I don't think I asked him at that time to draft an
02:18:34 affidavit.

02:18:35 **Q.** At some point later you did did you not?

02:18:37 **A.** Yes.

02:18:38 **Q.** And did you review that affidavit? You actually notarized it for him didn't you?

02:18:42 **A.** I believe so.

02:18:43 **Q.** And did he draw it up or did you?

02:18:45 **A.** I believe it was -- I'm not sure if both of us had part of it like I wrote something then he made corrections or not, I'm not sure.

02:18:54 **Q.** So he -- you were aware of the contents before he signed it?

02:18:58 **A.** I was, yes.

02:18:59 **Q.** And in that affidavit he says he's never seen Roy Lortie's report, is that accurate?

02:19:06 **A.** I'd have to see his affidavit.

02:19:10 **Q.** Sure.

02:19:45 (People's Exhibit D was marked for identification).

02:19:51 **Q.** Showing you People's Exhibit D, what is that?

02:19:57 **A.** This is Joe Fahey's affidavit dated July twenty-eighth.

02:20:02 **Q.** By Joe Fahey we mean Judge Fahey just to be clear?

02:20:06 **A.** Yes, notarized by Richard Haumann.

02:20:09 THE COURT: Hold on. What's the date, July twenty-eighth what, fourteen?

02:20:11 THE WITNESS: Fourteen, 2014, notarized by Richard Haumann.

02:20:15 THE COURT: Thank you.

02:20:16 **Q.** So I was inaccurate when I said you had notarized it, but you were aware of this information before you helped him draft it, is that accurate?

02:20:22 **A.** Yes.

02:20:23 **Q.** Okay, and in that affidavit he says he had never seen Roy Lortie's report, is that accurate?

02:20:29 MS. PEEBLES: Objection. She's reading -- going to be reading from a document that's not even been admitted into evidence.

02:20:33 THE COURT: Sustained. She can use it to refresh her recollection. I'll allow it.

02:20:38 MR. MOODY: I'll go that way.

02:20:39 **Q.** Does that refresh your recollection as to whether he said he had never seen Roy Lortie's report?

02:20:45 **A.** That's what it says on the affidavit.

02:20:48 **Q.** Okay, so you -- now going forward, when you decided -- when you looked at -- turning now back to the video, one of the things that piqued your interest was the van that Ms. Wescott spoke of, is that accurate?

02:21:13 **A.** Her contradiction piqued my interest, not necessarily any particular bit or piece. All of the contradiction piqued my interest.

02:21:21 **Q.** Well, the fact that there was a van involved piqued your interest, right?

02:21:28 **A.** Yes.

02:21:28 **Q.** And at some point when you received the letter from DA Oakes, included in that was some information about Roger Breckenridge, correct?

02:21:44 **A.** Yes.

02:21:45 **Q.** And the fact that Roger Breckenridge said that he had scrapped a van off Gary Thibodeau's property, is that accurate?

02:21:58 **A.** I -- I don't remember specifically. I know he scrapped a van from Gary Thibodeau's property, but I don't know specifically if that was what I was looking at.

02:22:07 **Q.** Well, in -- again, moving into your affidavit on paragraph thirty-six, didn't you write that he was interviewed by deputies early on in this investigation, and he told them, him being Roger Breckenridge, that he had junked a van supposedly, he supposedly took from Gary Thibodeau's property. Again, this information was never disclosed to the defense, and the significance of this revelation cannot be overstated since Gary Thibodeau did not own a van and the state's case was based on the theory that Allen was abducted in Richard Thibodeau's van. Did you write that?

02:22:43 **A.** I did. Gary didn't have a working van.

02:22:45 **Q.** But you didn't say working in here.

02:22:47 **A.** No, I did not say working. It was a -- it was a van

02:22:49 that apparently had sat there for years. It was not a working vehicle.

02:22:52 **Q.** And you also said that the information that -- that Gary, or excuse me, that a van off Gary's property had been scrapped, was never turned over to the defense, is that accurate?

02:23:06 **A.** I believe I did say that, yes.

02:23:07 **Q.** Now, at some point in time Judge Fahey was contacted about some inconsistencies or some inaccurate information in his affidavit.

02:23:21 MS. PEEBLES: I'm going to object, Your Honor. He -- Mr. -- Judge Fahey's going to be testifying and he can question him about what he believes his inconsistencies are.

02:23:30 THE COURT: Sustained.

02:23:31 MR. MOODY: Well, I don't -- I'm not going that way, Judge.

02:23:33 THE COURT: Where are you going with it then?

02:23:35 MR. MOODY: Well, I'll --

02:23:36 THE COURT: You characterize it as inconsistencies.

02:23:39 **Q.** Well, he filed a supplemental affidavit, is that accurate?

02:23:42 **A.** Yes.

02:23:42 THE COURT: I'll allow that.

02:23:43 **Q.** And in that supplemental affidavit he referred to a specific report, do you remember that?

02:23:50 **A.** I'd have to see the affidavit again please.

02:23:58 **Q.** Sure.

02:23:59 THE COURT: Are you making reference to the supplemental affidavit?

02:24:03 MR. MOODY: Yes.

02:24:03 THE COURT: Or the original.

02:24:06 (People's Exhibit E was marked for identification).

02:24:49 **Q.** Showing you what's been marked as People's Exhibit E, if you could just take a look at that and see if that refreshes your recollection as to whether or not Judge Fahey referred to a specific report.

02:24:59 **A.** Yes, about Tracey and Roger Breckenridge.

02:25:19 **Q.** Okay, and there was some other names mentioned in that report were there not?

02:25:24 **A.** Leland Neadle.

02:25:33 **Q.** Okay, yes.

02:26:15 (People's Exhibit F was marked for identification).

02:26:17 **Q.** I'm going to show you what's been marked as People's Exhibit F.

02:26:21 MR. MOODY: And I'm going to, with the Court's permission, even though it's not admitted, I'm going to

02:26:25 pull it out of the bag simply because the evidence
02:26:27 sticker was stuck over the front.

02:26:30 THE COURT: Any objection, Ms. Peebles?

02:26:31 MS. PEEBLES: No.

02:26:32 THE COURT: Okay, go ahead, Mr. Moody.

02:26:34 **Q.** Showing you the contents of Exhibit F, if you could
02:26:58 take a look at that.

02:27:36 (Whereupon, there was a pause in the
02:28:01 proceeding.)

02:28:01 **A.** Yes.

02:28:01 **Q.** And that report refers to Leland Neadle does it not?

02:28:07 **A.** That's the name on the lead, yes.

02:28:09 **Q.** Um hum, and but the report also refers to Leland
02:28:12 Neadle giving information, correct?

02:28:14 **A.** Yes.

02:28:15 **Q.** And that information is about Roger Breckenridge and
02:28:19 a gentleman by the name of David Maynes (ph) having
02:28:23 something to do with scrapping a van off of Gary's
02:28:27 property, is that accurate?

02:28:27 **A.** Yes.

02:28:28 **Q.** So when you said in this paragraph that that
02:28:32 information was never turned over to the defense, that's
02:28:34 not accurate is it?

02:28:35 **A.** No, it's not.

02:28:38 **Q.** Now, how long have you known Judge Fahey?

02:28:44 **A.** Twenty-five years.
02:28:46 **Q.** And I assume in those twenty-five years you have
02:28:50 both as an attorney and a judge been to his office, is that
02:28:54 accurate?
02:28:54 **A.** Yes.
02:28:55 **Q.** And would you describe it as an organized and neat
02:29:00 office?
02:29:00 **A.** No, I wouldn't.
02:29:04 **Q.** Now, you have no idea firsthand, is that accurate,
02:29:13 of what information was or was not turned over to the
02:29:17 defense prior to trial.
02:29:20 **A.** Other than what was in the file, no, I don't.
02:29:23 **Q.** Would that be firsthand information, somebody handed
02:29:26 somebody something to you or someone else that you saw?
02:29:29 **A.** Right. I have no firsthand information, correct.
02:29:32 **Q.** Now, you mentioned when you were on your direct
02:30:02 testimony about the fact that you had listened to the phone
02:30:07 call between DA Oakes and Investigator Pietroski and Tonya
02:30:13 Priest, is that accurate, back from I believe February of
02:30:17 2013?
02:30:17 **A.** Yes. It was mostly between DA Oakes and Tonya
02:30:22 Priest. I think Pietroski was in the background somehow.
02:30:26 **Q.** He was in the room but he didn't do a lot to
02:30:28 participate, is that accurate?
02:30:29 **A.** Yes.

02:30:29 **Q.** And you mentioned that one of the things that piqued your interest about Jennifer Wescott's conversation with Tonya was that it was Tonya, or excuse me, that Jennifer had brought up scrapping the van, do you remember that testimony?

02:30:49 **A.** All of her inconsistencies piqued my interest.

02:30:54 **Q.** One of those -- one of those inconsistencies that piqued your interest was something about scrapping the van, is that accurate?

02:31:02 **A.** One of them, yes.

02:31:04 **Q.** Now, in the conversation where you listened between DA Oakes and Ms. Priest, was a van mentioned?

02:31:11 **A.** I don't remember.

02:31:12 **Q.** You don't remember? Would you like to listen to the --

02:31:15 **A.** If you'd like to play it for me.

02:31:17 **Q.** Would that help you? Do you have that?

02:31:20 MS. PEEBLES: I do. I have it, it's in evidence already, it's part of Exhibit 35. It's an attachment, and my exhibit numbers are different, so where did you put thirty-five?

02:31:32 THE COURT: How long of an audio?

02:31:33 MS. PEEBLES: It's long.

02:31:33 MR. MOODY: It's pretty long. It's like forty-five, forty-eight minutes.

02:31:37 THE COURT: I think at this point we should probably take a ten-minute recess and evaluate what we're going to do until four o'clock. Ten-minute recess. It is now three-thirty. We'll recess until three-forty.

02:31:50 MS. PEEBLES: Unless we can find -- can we approach?

02:31:53 THE COURT: Sure.

02:31:54 (Whereupon, there was an off the record discussion at the bench.)

02:32:11 (Whereupon, there was a recess.)

02:41:09 THE COURT: Prior to recessing, there was an issue of whether or not the witness's recollection needed to be refreshed by the listening to an audio tape. We conferenced the matter at the bench prior to everybody recessing, and it's my understanding that the audio tape may not be required to refresh her recollection, is that correct, Ms. Peebles?

02:41:27 MS. PEEBLES: That's correct.

02:41:29 THE COURT: Mr. Moody, go along the same lines of questioning please, sir.

02:41:32 **Q.** In the conversation between DA Oakes and Ms. Priest while Mr. Pietroski, Investigator Pietroski was present, there was a significant part of discussion about what Tonya Priest described as the van, is that accurate?

02:41:46 **A.** I don't know if it was significant but there was conversation about the van.

02:41:50 **Q.** There was conversation.

02:41:51 **A.** Yes.

02:41:52 **Q.** And that contradicted to a certain extent what Jen Wescott had said, isn't that accurate?

02:42:01 **A.** Yes.

02:42:01 **Q.** And did you do a video of that?

02:42:04 **A.** I didn't.

02:42:05 **Q.** Now, in going through the trial file, you mentioned that you did not see the May seventeenth letters and attachments anywhere in the file, is that accurate?

02:42:23 **A.** That's accurate.

02:42:24 **Q.** And did you look at any other letters to see if -- if anything else had been sent or -- copy or anything had been sent at a different time?

02:42:37 **A.** There were lots of letters back and forth.

02:42:41 **Q.** Okay.

02:42:41 **A.** But there was nothing about a confidential informant.

02:42:43 **Q.** All right, well, was there other discovery being sent back and forth?

02:42:48 **A.** Other -- I believe --

02:42:49 **Q.** Not back and forth but to Mr. -- to Judge Fahey.

02:42:53 **A.** I believe there was some.

02:42:55 **Q.** And some of that was while in fact the trial was going on because this investigation, as you probably aware from having read all the transcripts, was continuing while the trial, both trials were going on because her body had never been found.

02:43:09 **A.** I -- I don't remember discovery being provided during the course of the trial. I know that there was -- in reference to the diary, he did send a letter about that.

02:43:20 **Q.** I'm -- I'm not talking about the diary, I'm talking about say for example notes, for example any other reports that had developed.

02:43:28 **A.** I don't recall.

02:43:29 **Q.** You don't recall seeing anything like that.

02:43:33 **A.** I don't recall one way or another.

02:43:35 **Q.** All right. Now, there was some discussion about -- while you were testifying about the fact that during the initial period when Ms. Priest came forward, that our office had requested that you keep the matter confidential and we -- we would provide you or DA Oakes would provide you with information as best he could without revealing anything to jeopardize the investigation, is that accurate?

02:44:13 **A.** Yes.

02:44:14 **Q.** Okay, and there was a twofold reason for that was there not?

02:44:18 **A.** I -- I don't know what the reason was, I just wanted

02:44:21 the information.

02:44:22 **Q.** You don't remember DA Oakes telling you that -- that
02:44:24 there was a dual responsibility our office had. One was to
02:44:27 find out if Gary Thibodeau didn't do this, to find out who
02:44:31 did, and if Mr. Thibodeau didn't do this, to get him
02:44:34 released. You don't remember being told that?

02:44:36 **A.** I remember he said he wanted the truth, but I don't
02:44:39 remember those exact words.

02:44:40 **Q.** During the time between -- between June sixth of
02:44:51 2013 and the beginning of March, 2013, how often would you
02:44:57 and DA Oakes talk?

02:44:59 **A.** I called him once or twice. He never returned my
02:45:03 calls so --

02:45:05 **Q.** Between March -- March, 2013 and June, 2013?

02:45:10 **A.** Oh, I'm sorry. We probably had, if I have to take a
02:45:14 guess, six to eight calls.

02:45:16 **Q.** Okay, and he provided you with the information.

02:45:20 **A.** He did, yes.

02:45:21 **Q.** And then you said that there were a couple of calls
02:45:25 that you claim were never returned, is that accurate?

02:45:28 **A.** Yes.

02:45:28 **Q.** And you had his e-mail address, correct?

02:45:30 **A.** Yes.

02:45:30 **Q.** Did you send him any e-mails?

02:45:32 **A.** I did not.

02:45:32 **Q.** So the total communication after June of 2013 were a couple of attempted phone calls that you made that were never returned, is that accurate?

02:45:41 **A.** That's accurate.

02:45:42 **Q.** And that didn't trigger with you that -- that the investigation was no longer confidential or was complete at that point in time and you could go and do with that information what you wanted?

02:45:53 MS. PEEBLES: Objection. Relevance.

02:45:56 THE COURT: Relevance, sir?

02:45:57 MR. MOODY: Just again going to the fact that -- that -- her credibility, Judge.

02:46:01 THE COURT: I'm going to allow it.

02:46:05 **A.** No, it didn't, 'cause I was hopeful he'd do the right thing.

02:46:09 **Q.** Now, you said that at some point in time you went out looking for a cabin with Investigator Hoffmann, is that accurate?

02:46:22 **A.** I went once, he went many times.

02:46:25 **Q.** Okay, but and where did you go?

02:46:27 **A.** He drove, it was somewhere on Rice Road.

02:46:31 **Q.** Okay, now at some point in time you became aware I think you said in June of 2014 that a cabin had been discovered, is that accurate?

02:46:39 **A.** Yes.

02:46:39 Q. And did you go to that location?

02:46:41 A. I didn't at that time, no.

02:46:42 Q. Did you at any point in time?

02:46:44 A. Yes.

02:46:44 Q. When was that?

02:46:45 A. I believe I went there when we had the cadaver dogs go. Our federal defender and our chief investigator were the ones going to the cabin. I didn't go till the cadaver dogs went.

02:47:01 Q. So when you state they found a cabin, you're basing that on what you were told, is that accurate?

02:47:05 A. Yes.

02:47:05 Q. Now, the cabin that Tonya Priest described that they took Heidi Allen to had a wood stove in it, right?

02:47:19 A. I believe she said that's what James Steen said.

02:47:22 Q. She described a cabin that Steen told her that they took her body to.

02:47:28 A. Yes.

02:47:29 Q. And it had a wood stove in it, right?

02:47:31 A. Yes.

02:47:31 Q. So the -- okay. And -- and a wood stove implies a rather large structure wouldn't you say?

02:47:39 MS. PEEBLES: Objection.

02:47:40 THE COURT: Sustained.

02:47:40 Q. Now, when you -- you mentioned that at sentencing

02:48:00 Judge Fahey asked now Judge Dodd, but former DA Dodd, about anything else that hadn't been checked in, is that accurate?

02:48:08 **A.** Yes.

02:48:08 **Q.** Did he specifically say anything about a confidential informant or any confidential informant materials?

02:48:14 **A.** No.

02:48:14 **Q.** He was aware through December eighth, at least as early as December seventh or December eighth, that there was some kind of file on Heidi Allen.

02:48:26 MS. PEEBLES: Objection.

02:48:26 THE COURT: Stop. Who is he?

02:48:28 MR. MOODY: Excuse me.

02:48:30 **Q.** Judge Fahey was aware as early as December seventh or December eighth of ninety-four that according to the Roy Lortie report that he had seen, there was some type of confidential file, isn't that accurate?

02:48:42 MS. PEEBLES: Objection as to what she thinks Judge Fahey was thinking.

02:48:44 THE COURT: I'll sustain that.

02:48:46 **Q.** According to your review of the transcript of December eighth and the newspaper article of December seventh, Judge Fahey was -- had mentioned the Roy Lortie report both in court and in newspaper article, correct?

02:49:07 MS. PEEBLES: Asked and answered.

02:49:08 THE COURT: I'm going to allow it.

02:49:10 **A.** He -- he mentioned it, yes.

02:49:11 **Q.** And you -- you have seen that report, correct?

02:49:15 **A.** The Lortie report I have now, yes.

02:49:18 **Q.** And the Lortie report clearly says a confidential
02:49:23 informant file was in VanPatten's mailbox, is that
02:49:26 accurate?

02:49:27 **A.** I believe so.

02:49:27 **Q.** And yet when asked about anything else that hadn't
02:49:30 been logged in, he doesn't mention in the sentencing
02:49:34 transcript, there's nothing mentioned about that report, is
02:49:37 that accurate?

02:49:38 MS. PEEBLES: Objection. I'm not sure who he
02:49:39 is referring to.

02:49:40 THE COURT: Just make sure --

02:49:41 **Q.** Judge Fahey never mentions in the sentencing
02:49:45 transcript that CI report not being, quote, unquote,
02:49:47 "logged in."

02:49:48 **A.** He asked if there was anything logged in with the
02:49:51 diary, so no, it was not specifically about the CI report,
02:49:54 no.

02:50:32 MR. MOODY: I have no further questions.

02:50:35 MS. PEEBLES: Just a few followups.

02:50:37 THE COURT: Sure.

02:50:38 REDIRECT EXAMINATION

02:50:39 BY MS. PEEBLES:

02:50:40 **Q.** Do you have Exhibit 4 with you up on the witness --

02:50:49 **A.** I have no exhibits any more.

02:50:51 THE COURT: I think Mr. Moody may have taken 02:50:53 Exhibit 4.

02:50:54 MR. MOODY: I may have. I'm very good at 02:50:57 that.

02:50:57 THE COURT: Will I get your pieces of evidence 02:51:03 at the end of the day or are you guys going to take 02:51:06 them with you?

02:51:07 MS. PEEBLES: By the way, where are the other 02:51:08 exhibits? This is four. We need eight, nine, ten, 02:51:11 eleven and eleven A.

02:51:12 THE COURT: I think Mr. Moody has -- he's 02:51:14 making a file of exhibits in front of him.

02:51:17 MR. MOODY: I don't have eight, nine, ten and 02:51:18 eleven, you had those, you took them back.

02:51:22 MS. PEEBLES: Nothing on the witness stand?

02:51:24 THE COURT: No, they might be back with you.

02:51:31 **Q.** Well, while we're looking for that, I'm going to 02:51:33 hand you what's been marked and received into evidence 02:51:36 Defendant's Exhibit 4 is the Post-Standard news article 02:51:40 that was referred to when Mr. Moody was asking some 02:51:43 questions.

02:51:43 MR. MOODY: I do have six.

02:51:46 A. Yes.

02:51:46 Q. I -- is Mr. Fahey quoted in that article?

02:51:54 A. He is.

02:52:19 Q. Can you please read the quote?

02:52:21 A. "Fahey said that if Allen was an informant --"

02:52:26 Q. Can you please keep your voice up?

02:52:28 A. I'm sorry, "Fahey said that if Allen was an informant for the Sheriff's Department, there might be other suspects with a motive to harm her, and if she wasn't, quote, we would not only know that claims of the two former inmates, in parenthesis, are false, but we would have proof, Fahey said."

02:52:47 Q. And could you look at page two of Exhibit 4 please?

02:52:50 A. Yes.

02:52:50 Q. Can you read the quote by the undersheriff at the time, Reuel Todd?

02:52:58 A. There's a couple of different quotes.

02:53:17 Q. I want you to read every quote by the undersheriff.

02:53:21 A. "Todd said when the sergeant remembered Allen as a confidential informant, quote, he was thinking of a file he hadn't seen so he wouldn't have known if it were one or a hundred cases, end quote, involving Allen. Quote, Todd said the fact that VanPatten had left notes from a conversation with Allen in the mailbox doesn't mean she was

02:53:57 acting as an informant. April third. Quote, the fact that
02:54:02 Deputy VanPatten didn't recall her as an informant
02:54:06 indicates parenthesis the file, end parenthesis, was no big
02:54:10 deal Todd said. Quote, and I can tell you there's stuff in
02:54:14 my mail drawer that I worked on twenty-one years ago," end
02:54:19 quote.

02:54:20 **Q.** Is there a quote in there from Lieutenant Goodsell?

02:54:24 **A.** Page two.

02:54:25 **Q.** Yeah. Yes.

02:54:27 **A.** Sheriff Lieutenant Dean Goodsell and Todd said --

02:54:49 MR. MOODY: I'm going to object, Judge.
02:54:50 That's not a quote.

02:54:51 **Q.** We'll, it's in evidence, so please read to me what
02:54:54 was referred to and attributed to Lieutenant Goodsell and
02:55:00 Undersheriff Todd.

02:55:02 **A.** "Sheriff Lieutenant Dean Goodsell and Todd said
02:55:07 Tuesday that there is no formal file because Allen was not
02:55:10 really an informant. Goodsell and Todd said they stand by
02:55:14 past statements that Allen had talked to investigators in
02:55:17 1992 about possibly informing on a drug deal involving a
02:55:22 friend, that the case never went anywhere. Goodsell said
02:55:25 the case did not involve the Thibodeaus."

02:55:30 **Q.** I'm going to hand you what's been marked as Exhibit
02:55:35 5 and ask if you can identify this document.

02:55:40 **A.** This document is a report by the Sheriff's

02:55:57 Department.

02:55:57 **Q.** All right, and would that be the Lortie report that's been referred to? Turn to the last page.

02:56:08 **A.** Yes.

02:56:09 **Q.** And the --

02:56:11 MS. PEEBLES: I'd like to move that into evidence. That's Defense Exhibit No. 5.

02:56:16 THE COURT: Any objection? Could you please show it --

02:56:19 MS. PEEBLES: Actually we stipulated to that.

02:56:21 THE COURT: I have it as M. Is this April twenty-second, 1994?

02:56:28 MS. PEEBLES: Yes.

02:56:29 THE COURT: In my post-stipulation it's Exhibit M.

02:56:36 MR. MOODY: M on one of the affidavits.

02:56:37 THE COURT: Would you show it to Mr. Oakes, make sure we're talking about the same report.

02:56:42 MS. PEEBLES: Yes.

02:56:55 (Whereupon, there was a pause in the proceeding.)

02:56:59 THE COURT: For clarification of Court's Exhibit 2, I have under paragraph four, April twenty-seventh, 1994, report of Sergeant Lortie. Attached to defendant's motion is Exhibit M. We're now

02:57:12 going to move this as exhibit --

02:57:15 MS. PEEBLES: Five, Judge.

02:57:16 THE COURT: Five. Any objection, Mr. Oakes,
02:57:18 Mr. Moody?

02:57:19 MR. MOODY: No.

02:57:20 MR. OAKES: No, Your Honor.

02:57:21 THE COURT: Thank you.

(Defendant's Exhibit No. 5 was received in
02:57:22 evidence).

02:57:22 **Q.** So the Lortie report that's just been received in
02:57:25 evidence as Defense Exhibit 5 was the talk of the
02:57:28 Post-Standard news article back on December seventh of
02:57:32 1994, correct?

02:57:33 **A.** Yes.

02:57:33 **Q.** And in the Post-Standard news article, the
02:57:39 undersheriff and the lieutenant discount what was in the
02:57:43 Lortie report, correct?

02:57:44 **A.** Yes.

02:57:45 **Q.** And during the December eighth motion argument,
02:57:55 Chief Assistant District Attorney Dodd suggested that was
02:58:00 the first he heard about Heidi Allen being an informant,
02:58:03 correct?

02:58:03 **A.** Yes.

02:58:03 **Q.** And he said he would have a conversation with
02:58:08 Attorney Fahey at some point, correct?

02:58:09 **A.** Yes.

02:58:10 **Q.** He did not concede at that point that there ever was a file that existed at that point, correct?

02:58:17 **A.** He didn't concede.

02:58:19 **Q.** In fact, the transcript reflects a direct request for the file that's referenced in the Lortie report, correct?

02:58:29 **A.** Yes.

02:58:29 **Q.** Now, the Defense Exhibits 8, 9 and 10 refer to the information being dropped in the parking lot of the D & W.

02:58:42 **A.** Yes.

02:58:43 **Q.** There's no mention of those -- of that information at that hearing, correct?

02:58:50 **A.** No.

02:58:50 **Q.** When were those documents generated, eight, nine and ten?

02:58:56 **A.** Eight, nine and ten I believe were generated in December of 1994 if I'm correct.

02:59:05 **Q.** After the hearing on the motion.

02:59:07 **A.** Yes.

02:59:08 **Q.** Correct?

02:59:08 **A.** Yes.

02:59:09 **Q.** According to the date stamps on the documents.

02:59:11 **A.** According to the date stamps which said received.

02:59:14 **Q.** Now, you were asked some questions about the items

02:59:20 that were in the evidence bag including a planner which were referred to in the -- in Exhibit 11 and 11A, the Kleist report. Do you recall that?

02:59:37 **A.** Yes.

02:59:37 **Q.** Now, specifically the Kleist report states that the items are confidential informant documents, correct?

02:59:48 **A.** Yes.

02:59:48 **Q.** Now, Mr. Moody was asking you some questions about whether or not there was a notation stating that she was a confidential informant on the cards, correct?

02:59:58 **A.** Right.

02:59:59 **Q.** But the Sheriff's Department themselves refer to those documents as confidential informant documents, correct?

03:00:05 **A.** Yes.

03:00:06 **Q.** Now, you had an opportunity to review an affidavit that was prepared by Donald Dodd in this case?

03:00:19 **A.** Yes.

03:00:19 **Q.** In support of the motion, in support of their motion to deny a hearing?

03:00:25 **A.** Yes.

03:00:25 **Q.** And in that affidavit, was there anything mentioned about you going to the Oswego County DA's office to review discovery with Joe Fahey?

03:00:39 **A.** Yes. He -- he stated I was there.

03:00:41 MR. MOODY: I'm going to object. It's beyond
03:00:43 the scope of cross, Judge.

03:00:44 THE COURT: I'd have to agree with that.
03:00:46 Donald Dodd's affidavit was not brought up. How's it
03:00:50 going to tie up what's been brought up in direct or
03:00:52 cross?

03:00:52 MS. PEEBLES: Judge, he was questioning Ms.
03:00:54 Bianco about what she was -- what she recalled in terms
03:00:57 of the contents of the file and regarding particularly
03:01:00 the letters, the discovery letters and attachments, and
03:01:03 Donald Dodd has suggested as far as their Brady defense
03:01:08 that Ms. Bianco was part of the defense team at the
03:01:11 time of the pretrial discovery exchange.

03:01:13 THE COURT: That was not raised, that specific
03:01:15 document was not raised on either by you or questioned
03:01:18 on cross, correct? I'm going to sustain it.

03:01:48 MR. MOODY: Judge, can we approach for a
03:01:50 minute?

03:01:50 THE COURT: Sure.

03:01:51 (Whereupon, there was an off the record
03:01:51 discussion).

03:02:36 **Q.** Now in connection with the Lortie report that was
03:02:43 just admitted into evidence, was there any reference
03:02:46 whatsoever about an informant card being created?

03:02:50 **A.** I have to see that one again, I'm sorry, I'm a

03:02:53 little tired.

03:03:08 (Whereupon, there was a pause in the proceeding.)

03:03:42 **A.** No. There's no mention of a card.

03:03:43 **Q.** There's no mention about a code name?

03:03:45 **A.** No, no code name.

03:03:46 **Q.** All right, and there's no mention of her information being dropped in the parking lot of the D & W?

03:03:51 **A.** No, none of that.

03:04:02 MS. PEEBLES: No further questions. Oh, excuse me.

03:04:04 **Q.** Mr. Moody was asking you some questions about the phone conversation that he had with Tonya Priest or Mr. Moody was asking you about the phone conversation with Mr. Oakes.

03:04:16 **A.** That Mr. Oakes had with Tonya Priest.

03:04:19 **Q.** Yes, and I am sleep deprived so I apologize.

03:04:23 **A.** Yes.

03:04:25 **Q.** Now he asked you some questions about whether Tonya Priest version of what happened with the van was opposite or different from what Jennifer Wescott said.

03:04:34 **A.** It was.

03:04:34 **Q.** And why did you find that significant?

03:04:38 **A.** Because it showed that Jennifer Wescott had some own independent knowledge of what happened to the van.

03:04:46 MS. PEEBLES: No further questions.
03:04:52 THE COURT: Mr. Moody? Give me just a second
03:04:55 please, sir.
03:04:58 (Whereupon, there was a pause in the
proceeding.)
03:05:08 THE COURT: Mr. Moody, sir, when you're ready,
03:05:11 if you are.
03:05:13 MR. MOODY: Nothing further, Judge.
03:05:15 THE COURT: You may step down.
03:05:18 THE WITNESS: Thank you.
03:05:20 MS. PEEBLES: Judge, I have an issue. I can't
03:05:22 seem to locate eight, nine, ten, eleven and eleven A.
03:05:25 I'm not sure where I put them. I had them up on the
03:05:29 witness box. I don't know if I picked them up. I
03:05:32 don't remember picking them back up.
03:05:59 THE COURT: Just gather all the items of
03:06:01 evidence and give them to the Court please. Would
03:06:25 counsel please approach?
03:08:29 (Whereupon, there was an off the record
03:08:30 discussion).
03:08:31 THE COURT: Call your next witness. The next
03:08:42 witness has indicated he doesn't want to be videotaped,
03:08:46 audio taped, or any still photographs. I'm going to
03:08:49 ask that the media respect the request of the witness.
03:08:53 Call your next witness, Ms. Peebles.

03:08:56 MS. PEEBLES: We would call Judge Fahey.

03:09:29 THE COURT: Hi, Judge, how are you?

03:09:31 THE WITNESS: Good. How are you? Nice to
03:09:32 meet you.

03:09:33 THE COURT: Good to see you, sir.

03:09:36 JOSEPH FAHEY, Called as a witness, having been
03:09:44 duly sworn, was examined and testified as follows:

03:09:44 THE CLERK: Please state your name for the
03:09:45 record.

03:09:45 THE WITNESS: Joseph E. Fahey.

03:09:47 THE CLERK: Thank you.

DIRECT EXAMINATION

03:09:48 BY MS. PEEBLES:

03:09:48 **Q.** Good afternoon, Judge. You're currently an Onondaga
03:09:53 County Court judge?

03:09:54 **A.** Yes.

03:09:54 **Q.** And how long have you been serving in that capacity?

03:09:56 **A.** Since January first of 1997.

03:09:58 **Q.** Prior to sitting as a county court judge, what was
03:10:01 your employment?

03:10:01 **A.** I was a partner in a law firm of Weiss & Fahey.

03:10:04 **Q.** Did you hold any teaching positions?

03:10:06 **A.** I taught basic trial practice at Syracuse University
03:10:10 College of Law from 1994 to about 2008.

03:10:14 **Q.** As a private practitioner, what type of cases were

03:10:19 you handling?

03:10:19 **A.** I handled all the litigation that our firm did. I
03:10:23 would say probably sixty percent of it would be criminal
03:10:28 defense work and maybe perhaps the other forty percent
03:10:32 would be contested civil proceedings.

03:10:34 **Q.** In what -- how long were you practicing in criminal
03:10:37 defense work and various other proceedings?

03:10:40 **A.** From 1975 till the end of 1996.

03:10:46 **Q.** And in what courts were you practicing?

03:10:49 **A.** I practiced in all state and federal courts, both
03:10:52 trial courts and appellate courts.

03:10:53 **Q.** I want to talk to you now about your representation
03:10:57 of Gary Thibodeau in 1994 through 1996. Were you assigned
03:11:01 or retained?

03:11:02 **A.** Retained.

03:11:03 **Q.** Do you remember when you first were hired to
03:11:05 represent Mr. Thibodeau?

03:11:06 **A.** I believe that I was retained in around July of 1994
03:11:18 because I think I was retained at a time when Gary was
03:11:21 still in custody in Massachusetts.

03:11:23 **Q.** So he was in custody at the time you were --

03:11:26 **A.** I believe so, yes.

03:11:27 **Q.** Were any of the lawyers assisting you at that time?

03:11:29 **A.** No.

03:11:30 **Q.** When did Randy Bianco become involved in Gary

03:11:33 Thibodeau's defense?

03:11:34 **A.** She didn't become involved in Gary's defense until 03:11:38 the day the 330 motion and sentencing occurred.

03:11:41 **Q.** So she wasn't involved in any of the pretrial 03:11:44 discovery phase of the trial?

03:11:46 **A.** No.

03:11:47 **Q.** Did you review the affidavit prepared by Donald 03:11:50 Dodd?

03:11:50 **A.** Yes.

03:11:51 **Q.** And in that affidavit he indicates Attorney Bianco 03:11:55 was provided with a copy of the People's discovery 03:11:58 response. Was Attorney Bianco involved in any way in the 03:12:00 pretrial discovery phase of the Gary Thibodeau case?

03:12:04 **A.** No.

03:12:04 **Q.** Did you also hire a private investigator to assist 03:12:11 you in the defense of Gary Thibodeau?

03:12:12 **A.** Yes.

03:12:12 **Q.** And who was that?

03:12:13 **A.** Robert and Joyce Calver.

03:12:16 **Q.** Did your investigators ever go to the DA's office to 03:12:20 review discovery?

03:12:20 **A.** I don't believe so. They may have gone to pick 03:12:24 boxes up, but I don't believe that they ever went to the -- 03:12:27 went and sat and went through any discovery materials.

03:12:31 **Q.** All right, I want to talk with you about the way in

03:12:33 which you received discovery in this case. Did you review
03:12:36 any documents before you came in here to testify today?

03:12:38 **A.** Yes.

03:12:39 **Q.** And which documents did you review?

03:12:41 **A.** I reviewed your motion, the People's response, a
03:12:47 number of reports from the Onondaga County, I'm sorry, the
03:12:50 Oswego County Sheriff's Office, my Omnibus motion, a
03:12:56 transcript of our Omnibus motion argument before Judge
03:13:00 Brandt and a transcript of the 330 motion and sentencing
03:13:04 minutes in Gary's case.

03:13:05 **Q.** I'm going to hand you what's been received into
03:13:08 evidence as Defense Exhibit 3 and ask if you can recognize
03:13:13 that document.

03:13:13 **A.** Yes. Three would be -- let me just take a moment.
03:13:26 Three would be the Omnibus motion that was filed in Gary's
03:13:31 case in Oswego County Court.

03:13:34 **Q.** I want to refer you at the bottom of page
03:13:37 twenty-three, paragraphs fifty-two and fifty-three. What
03:13:40 demands or requests did you make at the bottom of page
03:13:43 twenty-three?

03:13:44 **A.** You said paragraphs -- which paragraphs?

03:13:53 **Q.** I think fifty-two and fifty-three?

03:13:55 **A.** Okay. It was under the heading of Brady material.
03:14:07 Fifty-two is basically a repeat and re-pledging of various
03:14:15 paragraphs beforehand, and do you want me to read

03:14:20 fifty-three?

03:14:22 **Q.** Not -- yes, read fifty-three please.

03:14:26 **A.** Says, "Your affirmant respectfully requests
03:14:30 disclosure of all the evidence in the actual or
03:14:31 constructive possession, custody or control of the Oswego
03:14:35 County District Attorney's Office, Oswego County Sheriff's
03:14:38 Department or any law enforcement agency or agencies which
03:14:41 have acted at its request or direction or with whom it has
03:14:44 communicated with, the existence of which is known to the
03:14:47 Oswego County District Attorney's Office or the Oswego
03:14:50 County Sheriff's Department or should by the exercise of
03:14:53 due diligence become known which material may be favorable
03:14:57 to the defendant or bear upon or could reasonably weaken or
03:15:00 affect any evidence proposed to be introduced against the
03:15:03 defendant which evidence or information is relevant to the
03:15:06 subject matter of the indictment or the investigation
03:15:09 leading to the charges in the indictment and which evidence
03:15:13 or information may lead to any other exculpatory material
03:15:16 or would in effect in any manner aid the defendant in the
03:15:20 preparation of an adequate and proper defense. The items
03:15:22 sought are any papers, reports, testimony, statements or
03:15:27 other tangible items which may result in the discovery of
03:15:30 exculpatory materials which would tend to show or disprove
03:15:34 that the defendant did commit the offenses charged in the
03:15:36 indictment." That's fifty-three.

03:15:38 **Q.** I'm going to refer you to paragraph fifty-four on page twenty-four.

03:15:43 **A.** Yep.

03:15:44 **Q.** What demands did you make in that paragraph?

03:15:48 **A.** I requested all documents, papers and tangible 03:15:54 objects or portions or copies thereof favorable to the 03:15:57 defendant, the names and addresses of any and all potential 03:16:00 witnesses known to the People who might give information or 03:16:02 testimony favorable to the defendant, the names and 03:16:05 addresses of any and all persons interrogated by the People 03:16:08 in connection with this case whom the People do not plan to 03:16:11 call as a witness at the trial, any relevant written or 03:16:15 recorded statement made by the defendant or a copy thereof 03:16:18 or in the possession, custody or control of the People, the 03:16:21 existence of which is known by the exercise of due 03:16:24 diligence, may become known to the People, any substance of 03:16:27 any oral statements which the People intend to offer in 03:16:29 evidence at the trial made by the defendant or co-defendant 03:16:32 to a law enforcement agent or official or anybody now 03:16:35 acting in concert with or as a witness of the People and 03:16:39 copies of any and all records of convictions, records of 03:16:42 arrests, NYSIS computer records of criminal charges pending 03:16:46 against any witness intended to be called by the People at 03:16:50 trial together with the disposition of such criminal 03:16:52 charge."

03:16:52 **Q.** Thank you. Now in paragraph twenty-six you -- you -- take a look at that, you're referring to lead sheets. You're requesting lead sheets?

03:17:02 **A.** Paragraph twenty-six, all right.

03:17:04 THE COURT: What page, Ms. Peebles?

03:17:08 MS. PEEBLES: Page twenty-six, paragraph fifty-nine, I apologize.

03:17:12 THE COURT: Page twenty-six, paragraph fifty-nine. Thank you.

03:17:14 **A.** Thank you. "Any and all lead sheets made or kept by the Oswego County District Attorney's Office, the Oswego County Sheriff's Department or any other law enforcement agency during the course of this investigation concerning any other individual, subject or suspect who was reported to be involved in or have knowledge of the abduction of Heidi Allen pursuant to People versus Pugh, 107 AD2d 521, 4th Department, 1985."

03:17:40 **Q.** Incidentally, could you please explain what is meant by a lead sheet?

03:17:45 **A.** Lead sheet as I understand it is an entry that is made by a law enforcement agency when either the name of an individual or the subject becomes of interest to it and it's assigned a -- typically it's recorded on a sheet and then is assigned to an investigator to follow up the investigation of either that individual or that subject.

03:18:08 **Q.** Do you have an approximate idea of how many, do you recall how many leads were actually provided in terms of the master lists, the number of leads that were given to you?

03:18:22 **A.** It's -- we are now talking about something that occurred twenty years ago so I -- but I would say in the hundreds that were provided.

03:18:29 **Q.** Or maybe thousands?

03:18:31 **A.** Could be in the thousands.

03:18:31 **Q.** Did you ever see a lead sheet which indicated that Heidi Allen was an informant? The lead sheet.

03:18:40 **A.** No.

03:18:41 **Q.** Now, finally in -- on page twenty-seven of your request, paragraph sixty-one, did you request judicial review of the prosecution's file to insure that they were fulfilling their Brady obligation?

03:19:02 **A.** Yes.

03:19:02 **Q.** And did that happen?

03:19:03 **A.** No.

03:19:03 **Q.** Why did you make that request?

03:19:06 MR. MOODY: Objection, Judge. I'm not sure how this is relevant. It wasn't granted so --

03:19:12 THE COURT: Overruled. You can answer the question.

03:19:15 **A.** I made the request because I wanted to insure that

03:19:20 all of the information that was required to be disclosed
03:19:24 was going to be disclosed.
03:19:25 **Q.** And that didn't happen, right?
03:19:26 **A.** No.
03:19:27 **Q.** Now, was there a hearing scheduled to argue your
03:19:29 Omnibus motion?
03:19:30 **A.** Yes.
03:19:30 **Q.** And do you recall when the hearing was?
03:19:32 **A.** December the eighth of 1994 I believe.
03:19:38 **Q.** Before I ask you questions about what occurred
03:19:41 during that hearing, I want to ask you some questions about
03:19:44 several quotes that you gave the Post-Standard the day
03:19:47 before the hearing. I'm handing you what's been received
03:20:01 into evidence and marked as Defendant's Exhibit 4 and ask
03:20:04 if you can take a look at that document.
03:20:06 **A.** Sure.
03:20:07 (Whereupon, there was a pause in the
03:20:21 proceeding.)
03:20:21 **A.** All right.
03:20:21 **Q.** Are you quoted in that article?
03:20:24 **A.** Yes, yes.
03:20:25 **Q.** And do you recall making that statement?
03:20:27 **A.** Yes.
03:20:28 **Q.** Reading the document refresh your recollection?
03:20:32 **A.** Yes.

03:20:33 **Q.** And what were you referring to?

03:20:35 **A.** I was referring to a report that Bill Walsh had come into possession of. I don't know that I ever saw the report but communicated the substance of the report to me in which apparently one of the officers in the Oswego County Sheriff's Department had claimed that there was a file involving Heidi Allen as an informant with respect to drug transactions.

03:21:04 **Q.** And did the undersheriff and the lieutenant of the Oswego County Sheriff's Department make a claim regarding that report and that's quoted on page two of the defense Exhibit 4?

03:21:22 **A.** Yes. They contended that there was no file with respect to Heidi Allen being an informant and that whatever information she provided was not involving the Thibodeaus.

03:21:38 **Q.** All right, now you said there was a motion argument regarding the Omnibus motion that we were just referring to in Exhibit 3.

03:21:45 **A.** Yes.

03:21:45 **Q.** Now you had an opportunity to review that transcript before you came in here today?

03:21:51 **A.** Yes.

03:21:51 **Q.** And did you -- do you recall making a specific request as a result of learning about the Lortie report that you were referring to in the Post-Standard article?

03:22:03 **A.** Yes, I -- I asked for the file to be produced.
03:22:08 **Q.** And what was the reaction of the chief assistant
03:22:14 district attorney at the time, Donald Dodd?
03:22:18 **A.** I gather that we would talk about it at some future
03:22:23 point.
03:22:23 **Q.** And did you ever hear anything more about Heidi
03:22:26 Allen being an informant?
03:22:27 **A.** No.
03:22:28 **Q.** Was there a deadline set for you to receive
03:22:32 discovery in this case after that motion?
03:22:34 **A.** Well, we were told that we would receive discovery,
03:22:38 I -- within the next several weeks, and I think it was
03:22:42 suggested we would receive discovery by the end of 1994.
03:22:45 **Q.** Now, did -- was there a determination as to how you
03:22:58 were going to receive discovery during that motion
03:23:01 argument?
03:23:02 **A.** Well, there were a number of options proposed, and
03:23:05 the one in which -- one was that we could go to the
03:23:08 District Attorney's Office and review material there and
03:23:17 that material we wanted to have copied will be copied for
03:23:20 us. The other option that comes to mind was that we could
03:23:26 obtain all of the information and go through it ourselves.
03:23:30 **Q.** Before I get to that, the day after the hearing
03:23:37 there was another article in the Post-Standard with
03:23:41 regarding the deadline and the sharing of discovery.

03:23:48 MS. PEEBLES: I'm going to approach, Defense Exhibit 7. This has been stipulated by the parties.

03:23:55 THE COURT: Received based on the stipulation.

(Defendant's Exhibit No. 7 was received in 03:24:01 evidence).

03:24:01 **Q.** Looking at that article, is there an indication as 03:24:06 to whether or not Heidi Allen was an informant?

03:24:14 **A.** The department denied that she was an informant and 03:25:16 merely discussed an unrelated drug case with investigator 03:25:19 two years before the disappearance.

03:25:21 **Q.** And that article came out after your argument on 03:25:23 December eighth.

03:25:25 **A.** Yes. That would be the day after.

03:25:27 **Q.** So that came out the day after the motion argument.

03:25:30 **A.** Yes.

03:25:30 **Q.** All right, now getting back to how you decided or 03:25:34 requested to receive discovery, you made a request for the 03:25:43 entire file, correct?

03:25:44 **A.** Yes.

03:25:45 **Q.** And that was offered up to you by Chief Assistant 03:25:49 District Attorney Donald Dodd?

03:25:50 **A.** Yes.

03:25:50 **Q.** And you took him up on that?

03:25:55 **A.** Yes.

03:25:55 **Q.** Did you know what he meant by the entire Sheriff's

03:25:59 Department's file?

03:26:00 **A.** Well, when somebody says they're going to give you the entire file, you assume it's everything, so I believed that we were getting everything that was generated in the course of this investigation up through that point.

03:26:15 **Q.** I'm going to approach and ask -- I'm going to hand you what's been marked as Defense Exhibit 12 and ask you to take a look at that. Do you know what that document is?

03:26:43 **A.** Yes. It's a memo signed by Mr. Dodd and myself dated December the fourteenth of 1994 in which they purport to have provided me with a complete copy of the investigative file and I acknowledged that they did so.

03:27:27 **Q.** Now I'm going to hand you what's been marked as Defendant's Exhibit 13 and ask if you can identify this document.

03:27:39 THE COURT: Was twelve stipulated to?

03:27:42 MS. PEEBLES: They don't object.

03:27:43 THE COURT: No objection to twelve moving in?

03:27:46 MR. OAKES: None, Your Honor.

03:27:46 THE COURT: Okay, twelve's in.

03:27:52 MR. MOODY: Well, the memo.

03:27:54 MS. PEEBLES: Yes.

(Defendant's Exhibit No. 12 was received in evidence).

03:28:35 03:28:35 **A.** It's a six-page letter from Mr. Dodd to myself with

03:28:44 copies to both Judge Brandt and Bill Walsh which
03:28:51 memorializes our agreement with respect to their disclosure
03:28:56 of the files, our receiving the files, and as a more
03:29:01 detailed recitation of what was contained in the files.

03:29:03 **Q.** And how many individuals are named in there
03:29:07 approximately, how many pages of identifiers if you will or
03:29:13 names are on those pages?

03:29:15 **A.** Beginning on the bottom of page three at the last
03:29:19 paragraph and filling out page four and page five are -- is
03:29:31 a recitation of all of the materials that are purporting to
03:29:38 be disclosed.

03:29:39 **Q.** So it was a detailed list of everything that was
03:29:42 turned over to you on December fourteenth.

03:29:44 **A.** My recollection is that it is.

03:29:45 **Q.** Is there anything listed in Mr. Dodd's letter which
03:29:49 referred to Heidi Allen as an informant?

03:29:52 **A.** No.

03:29:53 **Q.** All right, now there are multiple Sheriff's deputies
03:29:56 named in the detailed discovery letter.

03:29:59 **A.** I believe that's at the bottom of page five.

03:30:01 **Q.** And did any of those names reflect the name Deputy
03:30:08 VanPatten?

03:30:08 **A.** No.

03:30:10 **Q.** Deputy Montgomery.

03:30:13 **A.** No.

03:30:14 **Q.** Sergeant Lortie.

03:30:18 **A.** No.

03:30:18 MS. PEEBLES: I'm offering Defendant's 13 and
03:30:33 I don't think there is any objection.

03:30:34 THE COURT: Any objection?

03:30:36 MR. MOODY: Just got to see it.

(Whereupon, there was a pause in the
03:30:44 proceeding).

03:30:44 MR. MOODY: No objection.

03:30:45 THE COURT: Thirteen is moved in.

03:30:47 (Defendant's Exhibit No. 13 was received in
03:30:51 evidence).

03:30:52 **Q.** Now, you mentioned lead sheets and what they refer
03:31:02 to. I'm going to hand you Defendant's Exhibit 17 and ask
03:31:28 if you can identify what this is.

03:31:30 **A.** Well, it's -- it's headlined for lack of a better
03:31:43 term or titled lead sheet number twenty-nine apparently
03:31:47 made on April the twentieth of 1994 at 9:56 a.m.

03:31:51 MS. PEEBLES: At this time I'm going to offer
03:31:53 defense exhibit -- what number is that?

03:31:56 THE WITNESS: That would be seventeen.

03:31:57 MS. PEEBLES: Seventeen.

03:31:58 MR. MOODY: See it again?

03:32:00 MS. PEEBLES: Yes.

03:32:11 MR. MOODY: Can we approach, Judge?

03:32:13 THE COURT: Sure.

(Whereupon, there was an off the record discussion at the bench). 03:33:17

03:33:17 **Q.** Now I'm going to give you back Defense Exhibit 17 03:33:20 and ask you to take a look at exhibit 977. What does 977 03:33:27 say next to it?

03:33:28 **A.** The New Haven Post Office.

03:33:30 **Q.** And look at the columns next to 977, and what do the 03:33:35 columns reflect next to the various leads that are set 03:33:39 forth in the exhibit?

03:33:40 **A.** Well, one column is for whether or not -- I believe 03:33:45 it's to check whether or not the lead was assigned and 03:33:49 whether or not I presume investigation of it was completed, 03:33:53 and in the third column would have a space for which the 03:33:58 particular officer assigned to it would be identified.

03:34:01 **Q.** All right, now looking at specifically lead 977, 03:34:06 what does -- what does it say next to 977?

03:34:09 **A.** There's no indication that it was assigned, no 03:34:12 indication that it was completed and no officer identified.

03:34:15 **Q.** And what is the lead?

03:34:16 **A.** The New Haven Post Office.

03:34:19 **Q.** So would you have done anything with that 03:34:21 information having received it from the prosecutor's 03:34:24 office?

03:34:24 **A.** I would have no idea what the significance of the

03:34:27 New Haven Post Office is.

03:34:28 **Q.** Thank you.

03:34:39 THE COURT: It's been moved in without
03:34:41 objection, correct, Mr. Moody?

03:34:43 MR. MOODY: Yes.

03:34:43 MS. PEEBLES: Yes.

(Defendant's Exhibit No. 17 was received in
03:34:44 evidence).

03:34:44 **Q.** Now I'm going to ask you some questions about
03:34:49 Defense Exhibit 11. I'm going to hand you defense -- it's
03:34:53 already been moved into evidence, and ask if you could take
03:34:56 a look at that document and can you identify what that
03:34:59 document is?

03:35:00 **A.** Eleven appears to be a lead sheet with three entries
03:35:09 on it, one -- and I think what it reflects is the lead
03:35:19 that -- and whom the lead was assigned to, and I presume it
03:35:32 means that it was followed up.

03:35:33 **Q.** I'm going to refer you back to the last entry at the
03:35:36 bottom.

03:35:36 **A.** Yes.

03:35:37 **Q.** And look at that. Is that an entry into evidence
03:35:43 logged by Investigator Whipple?

03:35:45 MR. MOODY: Objection, Judge. She just called
03:35:47 it something else and he just called it one thing. Can
03:35:49 we have a confirmation of because I don't know what

03:35:51 he's looking at, if she's looking at the same thing, because he called it a lead sheet, she's calling it an evidence card.

03:35:57 THE COURT: Do you want to refer to it as a lead sheet or evidence?

03:36:02 MS. PEEBLES: Well, it's an entry of an evidence log.

03:36:05 THE COURT: I think, Mr. Moody, the confusion is that she's referring to it as a lead sheet, but it's simply being asked was it moved into the evidence log.

03:36:13 MS. PEEBLES: Yeah.

03:36:15 THE COURT: You can answer the question.

03:36:17 THE WITNESS: Can I have it read back?

03:36:28 (Whereupon, the court reporter read back the last question).

03:36:30 **A.** I trust that's what it is.

03:36:31 **Q.** All right, and is there a date when he logged that in?

03:36:37 **A.** May twenty-third, 1995.

03:36:39 **Q.** And do you recall when Gary Thibodeau's trial began?

03:36:43 **A.** It began earlier in the month of May.

03:36:45 **Q.** Do you know the exact date?

03:36:47 **A.** I'm -- I'm drawing a blank on the exact date as we talk.

03:36:50 **Q.** And I'm going to have you look at page two of

03:36:53 Exhibit 11.

03:36:56 **A.** Yes.

03:36:56 **Q.** There are two date stamps on that document on page two.

03:37:04 **A.** Yes.

03:37:05 **Q.** And what do they reflect?

03:37:07 **A.** The date it was received by the District Attorney's Office which is May sixteenth, 1995, and the date it was received by the Oswego County Sheriff's Department of May twenty-third, 1995.

03:37:20 **Q.** And in that document it references confidential informant documents and a 1993 planner being logged in. Do you see that?

03:37:30 **A.** Yes.

03:37:30 **Q.** Had you ever seen this document when you were representing Gary Thibodeau?

03:37:37 **A.** No.

03:37:38 **Q.** I'm going to ask you to flip to page three. Have you ever seen that document that refers to Heidi Allen listed as a confidential informant, amongst others things, a 1993 planner?

03:37:58 **A.** No.

03:38:03 **Q.** Now I'm going to ask you to take a look at defense Exhibit 11A which has already been moved into evidence and received. Now there's a cover letter there and it's

03:38:21 addressed to both you and Mr. Walsh, you see that?

03:38:23 **A.** Yes.

03:38:23 **Q.** And it indicates that he's sending you some
03:38:27 discovery.

03:38:31 **A.** Okay.

03:38:32 **Q.** And your trial started in May, correct?

03:38:38 **A.** Yes.

03:38:39 **Q.** All right, look at the second page of that document.

03:38:46 **A.** Yes.

03:38:47 **Q.** And that document is different from the document I
03:38:50 just gave you because there's one date stamp on it?

03:38:53 **A.** There's a date that it's received by the District
03:38:56 Attorney's Office on May sixteenth, 1995. There is no
03:39:00 second date of May twenty-third, 1995.

03:39:07 **Q.** And that document refers to Heidi Allen as an
03:39:11 informant?

03:39:11 **A.** Yes.

03:39:11 **Q.** And a 1993 planner?

03:39:13 **A.** Correct.

03:39:13 **Q.** And a code name?

03:39:15 MR. MOODY: Judge, I'm going to object to
03:39:17 leading. If he wants to answer --

03:39:19 THE COURT: I'll allow it since it's allowable
03:39:23 leading. Go ahead.

03:39:24 **Q.** You can answer the question.

03:39:26 **A.** Yes. There is a document attached to it that has a photograph of Heidi Allen, code name, and would appear to be a right thumb print and a left thumb print.

03:39:39 **Q.** Had you ever seen those documents while you were representing Gary Thibodeau?

03:39:43 **A.** No.

03:39:45 **Q.** How do you know? How can you be sure?

03:39:47 **A.** Because I would have remembered certainly the code name and the photograph and the thumb prints.

03:39:54 **Q.** Have you ever seen a confidential informant card?

03:39:57 **A.** No.

03:39:58 **Q.** Now, I'm going to hand you what's been marked as Defense Exhibit 10, it's been received into evidence.

03:40:14 **A.** All right.

03:40:15 **Q.** Had you even seen that document while you were representing Gary Thibodeau?

03:40:20 **A.** I don't recall ever seeing the document, but I am -- I was familiar with the information contained in it.

03:40:29 **Q.** In that document.

03:40:31 **A.** Yes.

03:40:33 **Q.** Did you ever know her information was dropped in the parking lot of the D & W?

03:40:38 **A.** No.

03:40:38 **Q.** I'm going to hand you what's been marked as Defense Exhibit 9 and ask you to take a look at this document.

03:40:48 Read that document if you will to yourself and tell me
03:40:52 whether you have ever seen that document before.
03:40:56 (Whereupon, there was a pause in the
03:41:00 proceeding.)
03:41:00 THE COURT: What exhibit is this? I'm sorry.
03:41:03 MS. PEEBLES: That's Exhibit 9.
03:41:38 **Q.** All right, the report I handed you before I think
03:41:40 was Exhibit 8, and you said you thought you had seen this
03:41:42 before, but you said you don't recall ever seeing any
03:41:45 information that her information had been dropped in the
03:41:48 parking lot.
03:41:49 MR. MOODY: I'm going to object, Judge. What
03:41:50 he said about when he was looking at that report was
03:41:52 that he was aware of the information.
03:41:54 MS. PEEBLES: Scratch that. I'm sorry.
03:41:55 THE COURT: Yes.
03:41:55 MS. PEEBLES: I handed you Exhibit 10 and you
03:41:58 referred to the Lortie report in Exhibit 10 and that's
03:42:01 what you were referring to.
03:42:02 MR. MOODY: Judge, could we just have that
03:42:04 read back? We're all very confused.
03:42:07 THE COURT: Exhibit 10 I have down as Anderson
03:42:09 report, and the judge's testimony was he does not
03:42:11 recall seeing the document but familiar with the
03:42:13 information.

03:42:15 **Q.** The Lortie report is referred to in that document, correct?

03:42:18 **A.** Yes. I am familiar -- I knew of the information contained --

03:42:22 **Q.** In the Lortie report?

03:42:23 **A.** In Exhibit 10.

03:42:25 **Q.** Not in Exhibit 10, Exhibit 10 refers to the Lortie report.

03:42:28 THE COURT: Please approach. Bring ten over please. Ms. Peebles, can I have Exhibit 10 please?

03:42:36 MS. PEEBLES: Yes. Can we have exhibit ten?

03:42:39 THE WITNESS: Sure.

(Whereupon, there was an off the record discussion at the bench). 03:44:31

03:44:31 **Q.** For clarification, I'm handing you back Defense Exhibit 10. Prior to me showing you that document in June of 2014, had you ever seen that document, and I apologize, I said the contents, that document before?

03:44:48 **A.** The hard copy of it, no.

03:44:50 **Q.** Not -- that's not the Lortie report. I know you've never seen the Lortie report.

03:44:55 **A.** Correct.

03:44:55 **Q.** Right, okay?

03:44:57 **A.** This is the Anderson report.

03:44:58 **Q.** Right.

03:44:59 **A.** Yes.

03:44:59 **Q.** Okay, and you have never seen the Anderson report until I showed it to you in 2014.

03:45:06 **A.** The report itself, yes.

03:45:08 **Q.** Yes, you've never seen that, okay. Now you said you were familiar with the Lortie report but you had never seen it.

03:45:15 MR. MOODY: Objection. That's not what he said. He's familiar with the contents of the document. She can ask him what he means by that but she's leading him.

03:45:22 THE COURT: I'm going to sustain. Hold on, Judge, please. Can you please rephrase the question?

03:45:26 **Q.** My question to you, Judge, is had you ever seen any of those documents, eight, nine and ten, prior to me showing them to you in connection with this motion?

03:45:42 **A.** The documents, no.

03:45:44 **Q.** But there's content in one of those reports that refers to the Lortie report, correct? Sergeant Lortie's name is not on any of those reports?

03:45:57 **A.** Well, his -- his -- he's referenced in it.

03:45:59 **Q.** Exactly.

03:46:00 **A.** Yes.

03:46:00 **Q.** I'm sorry, I'm confused. I confused you and everybody else.

03:46:05 THE COURT: That's all right.

03:46:05 **Q.** All right, those reports refer to Heidi Allen as an informant and her information being dropped in a parking lot, correct?

03:46:12 **A.** Two of them do, one of them does not.

03:46:23 **Q.** Had you any knowledge regarding the information of Heidi Allen's informant status being compromised in a parking lot of the D & W?

03:46:36 **A.** No.

03:46:37 **Q.** Had you had that information and seen those reports before trial, how would you have used that information?

03:46:56 **A.** Well, I would have probably had my investigator go out and ascertain how it occurred, who may have seen it and -- and inquire further into her status as an informant.

03:47:11 **Q.** But after the December eighth hearing and the reports to the Post-Standard on the following day, what was your understanding with regard to Heidi Allen's status as an informant?

03:47:21 **A.** That she was not an informant, she'd never been used as an informant, and couldn't provide any useful information as an informant.

03:47:28 **Q.** Now the Kleist report refers to a 1993 planner. Not a diary, but a planner. Had you ever seen a 1993 planner?

03:47:37 **A.** No.

03:47:37 **Q.** If you had received the Kleist report, would you

03:47:41 have requested access to the planner?

03:47:42 **A.** Yes.

03:47:43 **Q.** And when did you first learn that Heidi Allen had a diary?

03:47:48 **A.** Between the verdict and the date of sentencing our office received an anonymous call advising us that the District Attorney's Office was in possession of what the caller termed to be a diary. I wrote Donald Dodd and requested to know if that was true and sought production of the -- of the diary, and on the morning of sentencing and the 330 motion, Mr. Dodd confirmed for the Court and myself that there was indeed a diary in existence.

03:48:34 **Q.** And had you known about Heidi Allen's informant status, what -- how would you have argued regarding the materiality of the diary?

03:48:44 **A.** Well, the -- I would have argued that because I now know from the second trial that there was no mention of either of the Thibodeaus in a diary, that the lack of any mention of the Thibodeaus in the diary, and the fact that she was an informant for the Oswego County Sheriff's Office, that clearly she had no contact with the Thibodeaus and they were not potential source of peril to her.

03:49:13 **Q.** And how about the fact that her informant status had been compromised in the very parking lot where she was employed?

03:49:19 **A.** Well, that certainly in my judgment would have put her at risk and it also would have given other people motives to -- to harm her.

03:49:28 **Q.** During the course of the trial for Gary Thibodeau, was there a motive that was ever argued or provided with why he would ever abduct Heidi Allen?

03:49:38 **A.** I don't believe so other than a reference in Mr. Dodd's summation to there perhaps being a drug deal that no one knew about.

03:49:51 **Q.** Now --

03:49:53 **A.** And -- and testimony from two people that were in jail with Mr. Thibodeau in Massachusetts who made claims that he made statements about that.

03:50:02 **Q.** Now, did you ever hear of an individual named Tyler Hayes?

03:50:08 **A.** No.

03:50:08 **Q.** Following Gary's sentencing, were you ever contacted by anyone from the Oswego County Sheriff's Department or the District Attorney's Office regarding any further Brady disclosures?

03:50:18 **A.** No.

03:50:19 **Q.** You had made a request during the sentencing and 330.30 motion to Donald Dodd, you asked him if there was anything else in the prosecution's possession that was logged in with the diary.

03:50:34 **A.** Correct.

03:50:34 **Q.** And what did -- what was Mr. Dodd's response?

03:50:39 **A.** I believe he told me he'd provided me with
03:50:42 everything.

03:50:42 **Q.** Did you sit through Richard Thibodeau's trial?

03:50:44 **A.** I did not.

03:50:45 MS. PEEBLES: No further questions.

03:50:49 THE COURT: Can you wrap it up in ten or
03:50:51 should we just --

03:50:52 MR. MOODY: No.

03:50:53 THE COURT: Judge, with all due respect, I've
03:50:56 got to have you come back tomorrow morning.

03:50:58 THE WITNESS: I can't come back tomorrow. I
03:51:00 have a murder trial, I'm in the middle of the jury
03:51:01 coming in. I can come back later in the week when it's
03:51:04 done but that's as good as --

03:51:06 MS. PEEBLES: I can do it in the middle of the
03:51:09 week, whatever's convenient.

03:51:09 THE COURT: I'm worried about Mr. Moody.

03:51:10 THE WITNESS: I -- I am prepared to stay late.

03:51:13 THE COURT: The state doesn't allow us to
03:51:17 unfortunately.

03:51:23 THE WITNESS: Jury's coming in tomorrow
03:51:24 morning to hear one more witness, closing arguments and
03:51:27 instructions, so as an optimist I would say Wednesday

03:51:32 or Thursday, but that's being an optimist.
03:52:02 (Whereupon, there was an off the record
03:52:05 discussion at the bench.)
03:52:05 THE COURT: We're going to conclude today's
03:52:07 calendar. The state does not allow us to go beyond
03:52:09 four o'clock. Judge Fahey, if you could communicate
03:52:12 with Ms. Peebles when you'll be available to be subject
03:52:15 to cross-examination.
03:52:16 THE WITNESS: Sure.
03:52:17 THE COURT: Hopefully it will be Wednesday
03:52:18 morning and it would definitely be sometime this week.
03:52:22 I appreciate it, and you can step down, Judge.
03:52:23 THE WITNESS: Thank you.
03:52:26 THE COURT: Does the Court have all of the
03:52:27 pieces of evidence?
03:52:29 MS. PEEBLES: Exhibit 6, and I think I have
03:52:30 put everything else up here I hope.
03:52:32 MR. MOODY: I think we only admitted two,
03:52:34 Judge, and I think you have them both.
03:52:41 MR. OAKES: A and B.
03:52:49 THE COURT: Okay, Court's in recess until
03:55:23 tomorrow morning.

(Conclusion of Proceeding).

* * *

CERTIFICATE

I, JENNIFER ADYDAN, an Official Court Reporter in and for the State of New York, Fifth Judicial District, do hereby certify that the foregoing is a true, complete and accurate transcript of my stenographic notes taken in the above-entitled matter and the whole thereof to the best of my ability.

Jennifer Adydan

Jennifer Adydan
Official Court Reporter

DATED: January 20, 2015

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF OSWEGO: CRIMINAL TERM:

--x

THE PEOPLE OF THE STATE OF NEW YORK

Indict. No.
94C-0161

- against-

HEARING
VOLUME 2

GARY THIBODEAU,

Defendant.

--x

Oswego County Courthouse
25 E. Oneida Street
Oswego, NY 13126

DATE: January 13, 2015

Before:

HONORABLE DANIEL R. KING
Acting County Court Judge

Appearances:

GREGORY S. OAKES, ESQ.
District Attorney, Oswego County
MARK M. MOODY, ESQ.
Chief Assistant District Attorney

OFFICE OF THE FEDERAL PUBLIC DEFENDER
BY: LISA PEEBLES, ESQ., Public Defender
RANDI JUDA BIANCO, ESQ., Assistant Public Defender

Defendant is present

08:48:45

08:48:45

INDEX TO WITNESSES

	Direct	Cross	Redirect	Recross
FOR THE DEFENDANT:				
John Brandt	153	159	--	--
Robert Calver	174	176	184	185
Darlene Upcraft	187	193	--	--
Tyler Hayes	198	203	--	--
James Steen	215	287	310	--
Roger Breckenridge	316	343	--	--

INDEX TO EXHIBITS

	Identification	Evidence
FOR THE DEFENDANT:		
19. Lead sheet	--	193
21. Lead sheet	--	203
44. Steen affidavit	--	244
45. Steen phone records	--	238
94. Steen sworn statement	--	244
FOR THE PEOPLE:		
G. Calver typewritten note	181	--
H. Hayes affidavit	209	--
I. Photograph	350	--

09:15:57 THE COURT: We are on the record in chambers on Tuesday, January thirteenth. We've had a conference regarding some Brady issues that have arisen since yesterday's hearing, and based upon the issues that have arisen, both the Federal Public Defender's Office and the District Attorney's Office has agreed to continue to move forward on the hearing, but that the Public Defender's Office will have the right to reopen any new evidence issues that may arise based upon a soon to be mutually -- a mutual department investigation between the Public Defender's Office, the Federal Public Defender's Office, excuse me, and the Oswego County District Attorney's Office, is that agreed?

09:16:38 MS. PEEBLES: Yes.

09:16:39 THE COURT: Agreed?

09:16:40 MR. OAKES: Yes.

09:16:40 THE COURT: Okay, and we will work together, correct?

09:16:42 MS. PEEBLES: Yes.

09:16:43 MR. OAKES: Absolutely.

09:16:44 THE COURT: Thank you.

09:25:36 (Whereupon, there was an off the record discussion at the bench).

09:25:38 THE COURT: It is Tuesday morning, January

09:25:46 thirteenth. We're here for the continuation of 440
09:25:49 motion on the Gary Thibodeau matter. Ms. Peebles, are
09:25:51 you ready to call your next witness?

09:25:53 MS. PEEBLES: I am, Your Honor.

09:25:54 THE COURT: At the close of yesterday, Judge
09:25:56 Fahey was on the stand. He was not cross-examined. We
09:25:59 plan on cross-examining him tomorrow morning. With the
09:26:02 consent of the People, he's going to be taken out of
09:26:04 sequence. Is that all right with you, Mr. Oakes, Mr.
09:26:06 Moody?

09:26:06 MR. MOODY: Yes, Judge.

09:26:07 THE COURT: Okay, Ms. Peebles, all right with
09:26:10 you?

09:26:10 MS. PEEBLES: That's fine, Your Honor.

09:26:11 THE COURT: Call your next witness please.

09:26:12 MS. PEEBLES: We would call the Honorable Jack
09:26:16 Brandt.

09:27:18 JOHN BRANDT, Called as a witness, having been duly
09:27:21 sworn, was examined and testified as follows:

09:27:21 THE CLERK: Please state your name for the
09:27:25 record.

09:27:26 THE WITNESS: John Brandt, B-R-A-N-D-T.

09:27:29 THE CLERK: Thank you.

09:27:29 THE COURT: Judge Brandt, before we go
09:27:31 further, I'm going to ask you if you consent to being

09:27:34 video taped and audio taped.

09:27:36 THE WITNESS: Sure.

09:27:36 THE COURT: You do?

09:27:37 THE WITNESS: No problem.

09:27:39 DIRECT EXAMINATION

09:27:40 BY MS. PEEBLES:

09:27:40 **Q.** Good morning.

09:27:41 **A.** Good morning, Lisa. How are you?

09:27:43 **Q.** Good. Do you currently live in Oswego County?

09:27:45 **A.** I do.

09:27:46 **Q.** How long have you lived in Oswego County?

09:27:48 **A.** Since 1975.

09:27:51 **Q.** What is your current occupation?

09:27:53 **A.** I'm an attorney.

09:27:55 **Q.** What -- what years did you serve as an Oswego County
09:27:59 Court Judge?

09:27:59 **A.** 1988 to 1997 I think.

09:28:09 **Q.** In your capacity as an Oswego County Court Judge,
09:28:13 did you have a number of dealings with Chief Assistant
09:28:16 District Attorney Donald Dodd in criminal cases?

09:28:18 **A.** Yes, I did.

09:28:18 **Q.** Did you have any recurrent problem with discovery
09:28:22 issues and his willingness to turn Brady material and
09:28:26 discovery items over to the defense?

(Whereupon, there was a pause in the

09:28:47 proceeding).

09:28:47 **Q.** Let me ask you this.

09:28:48 **A.** What do you mean by problem?

09:28:49 **Q.** Timeliness of turning over Brady material.

09:28:51 **A.** Oh, well --

09:28:52 MR. MOODY: I'm going to object. I mean are
09:28:53 we going to talk about this specific case or are we
09:28:55 talking about --

09:28:56 THE COURT: Are you going to specifically talk
09:28:58 about --

09:28:58 MS. PEEBLES: Yes.

09:28:58 THE COURT: -- the Thibodeau case?

09:29:00 MS. PEEBLES: Yes.

09:29:00 THE COURT: Go right to the Thibodeau case.

09:29:02 **Q.** Did you preside over a proceeding involving the case
09:29:06 of Gary Thibodeau?

09:29:07 **A.** Yes. I had some involvement in that case.

09:29:09 **Q.** And specifically was it in connection with the
09:29:12 hearing concerning the Omnibus motion filed by at that time
09:29:16 Attorney Joseph Fahey?

09:29:19 **A.** Yes. I had an appearance regarding those motions,
09:29:23 yes.

09:29:24 **Q.** And have you reviewed that hearing transcript before
09:29:27 coming in here today?

09:29:28 **A.** I did.

09:29:28 **Q.** Did you review any other documents before you came
09:29:31 in here today?

09:29:31 **A.** I -- I -- I think I read -- I think I read a -- I
09:29:45 read the transcript of that proceeding and I read the
09:29:50 transcript of the sentencing proceeding before Judge Clary
09:29:57 because there was a connection between the two of them.

09:30:00 **Q.** And when you say connection, what do you mean by
09:30:01 that?

09:30:02 **A.** There was a significant discussion on the -- on the
09:30:08 date that I presided concerning the -- a newspaper article
09:30:15 that had been in the -- in the papers a day or so before
09:30:20 that hearing regarding information about Heidi Allen, Heidi
09:30:25 Allen being an informant for the Sheriff's Department, and
09:30:31 the sentencing proceeding involved an issue as I recall
09:30:40 with concern about the production of documentation
09:30:48 involving Heidi Allen's alleged designation as a
09:30:58 confidential informant. I think it involved some diaries
09:31:02 that she may have made. So yes, I did, I did read that --
09:31:07 that transcript and that was the reason that I read it.

09:31:10 **Q.** During the hearing with regard to the Omnibus
09:31:13 motion, do you recall learning about a report created by
09:31:16 Sergeant Lortie through newspaper accounts?

09:31:18 **A.** Yeah. That's -- that's what I remember reading is
09:31:23 the -- in fact, I didn't read it that much, I just kind of
09:31:26 saw the headline the day before, and I mentioned it because

09:31:30 Mr. Fahey had -- had brought it up, and Mr. Dodd seemed to
09:31:35 be quite unadvised about it. My recollection is that he
09:31:40 said that the first time he'd heard about it was in the --
09:31:43 when reading the newspaper article himself.

09:31:46 **Q.** And after reading about the news, after reviewing
09:31:50 the newspaper article, did you believe the significance of
09:31:54 the Lortie report or the accuracy of the Lortie report may
09:31:58 have come into question at that point?

09:32:01 MR. MOODY: I'm going to object to what he
09:32:04 believes, Judge, his mental state, his thoughts.

09:32:06 THE COURT: I'll allow it.

09:32:08 MS. PEEBLES: I guess I should rephrase the
09:32:10 question.

09:32:10 THE COURT: Rephrase it, yes.

09:32:13 **Q.** My question is after you -- you had knowledge of
09:32:15 that newspaper article going into the hearing, correct?

09:32:18 **A.** Yes.

09:32:18 **Q.** All right, and as a result of reading that article,
09:32:22 did you question the accuracy of what was in the Lortie
09:32:25 report even though you hadn't seen the Lortie report?

09:32:29 **A.** I didn't question the accuracy of it because I'd
09:32:31 never seen it. I think it was Mr. Dodd was questioning the
09:32:36 accuracy of it. I don't know. I've never seen the Lortie
09:32:39 report.

09:32:40 **Q.** Now, do you recall whether or not there was a

09:32:45 discovery deadline in which the parties were supposed to
09:32:48 turn over all discovery?
09:32:50 **A.** Let's just -- just be clear about this. On that
09:32:57 date we spent about an hour or an hour and twenty minutes
09:33:00 discussing the issues of discovery and Brady and Rosario
09:33:04 and all of those named items, and having read the response
09:33:12 to the discovery motions that had been filed by the
09:33:16 District Attorney's Office, Mr. Dodd in particular, I
09:33:20 initially inquired of Mr. Dodd what he meant by a lead
09:33:27 sheet because that was repeatedly mentioned in the
09:33:31 responsive papers, and he explained to me what he meant by
09:33:34 a lead sheet, and as a result of that explanation, we
09:33:40 entered into discussions about the motions, and I said it
09:33:43 seems to me that we don't have a lot to argue about here
09:33:46 today because Mr. Dodd has indicated that he's going to
09:33:50 turn over everything that he has in the -- in the file in
09:33:56 this case including those lead sheets which contain for
09:34:01 example the name of all the people who -- who he had -- who
09:34:05 the Sheriff's Department had interviewed, so I inquired of
09:34:09 him why are you objecting to Mr. Fahey's request for the
09:34:15 names and addresses of witnesses that you interviewed since
09:34:18 you've already indicated that you're going to turn
09:34:20 everything over and -- and I said I don't want to put words
09:34:24 in your mouth, Donald, but I'm reading your affidavit, says
09:34:28 you're going to turn the file over, and then -- then from

09:34:34 that point forward it was just a game of semantics because
09:34:39 by the time this motion argument was over, it appeared that
09:34:45 there were many items that Donald felt that he did not have
09:34:49 to give up and that he was not willing to give up, so I
09:34:53 said to the lawyers towards the end of motion argument, get
09:34:58 together, deliver what you're agreeing to deliver, and any
09:35:06 items that the -- that there's an issue about we will -- we
09:35:12 will entertain argument on those and I will make a ruling
09:35:16 as to what should be given and what should not, what
09:35:19 doesn't have to be given, and I'd let -- I think it was --
09:35:29 my recollection is that Mr. Dodd had indicated that there
09:35:32 wouldn't be a problem producing the -- reproducing a lot of
09:35:36 information, so I think we had eventually agreed on the
09:35:40 thirtieth of December for -- for a report date to me as to
09:35:45 what was going to be required to be litigated, and so I
09:35:54 guess from a standpoint of deadline, I would say that the
09:35:58 thirtieth of December.

09:35:58 **Q.** Did you have any involvement with the case after
09:36:01 that motion argument?

09:36:04 **A.** You know, my -- my recollection here now is that I
09:36:28 was -- something happened with the availability of a judge
09:36:31 in Onondaga County, and I believe that the administrative
09:36:34 judge assigned me to Onondaga County for the bulk of the --
09:36:44 the bulk of the year 1995, and this was 1994 I think?

09:36:50 **Q.** Yes.

09:36:50 **A.** So after the -- in fact, I think I was gone
09:36:53 before -- before the thirtieth, before the deadline came
09:36:56 up, I think Judge Clary came in and took over, took over
09:36:59 the case for here from that point forward, so my
09:37:03 recollection now is that I don't believe I had any further
09:37:05 involvement in that case at all.

09:37:07 MS. PEEBLES: All right, thank you. No
09:37:08 further questions.

09:37:09 THE WITNESS: You're very welcome.

09:37:11 THE COURT: Mr. Moody, just give me a second
09:37:14 please, sir.

09:37:14 MR. MOODY: Yes.

09:37:18 (Whereupon, there was a pause in the
09:37:28 proceeding.)

09:37:28 THE COURT: Whenever you're ready, sir.

09:37:31 CROSS-EXAMINATION

09:37:31 BY MR. MOODY:

09:37:32 **Q.** Good morning, Judge.

09:37:51 **A.** Good morning, Mark. How are you?

09:37:54 **Q.** You mentioned that you had been assigned to handle
09:38:02 something, some matters in Onondaga County in -- at some
09:38:09 point. Do you remember whether that occurred before or
09:38:12 after this December eighth appearance?

09:38:14 **A.** I was assigned to various courts primarily after the
09:38:24 first year that I had been elected, that I would be sent to

09:38:30 Oneida, Onondaga, Jefferson County, Herkimer to cover for
09:38:36 judges that were ill or were otherwise indisposed or that
09:38:39 there were conflicts, so I would have to say that it was
09:38:42 both before and after. I mean I think I -- I think I was
09:38:45 assigned to Onondaga County when Judge Gorman retired, and
09:38:49 I became an acting Court of Claims Judge, I know I was
09:38:54 assigned to Onondaga County when Judge Cunningham became
09:38:57 unavailable, and I think there were a couple of occasions
09:39:01 when I had took Judge Burke's calendars or presided over
09:39:10 cases for him.

09:39:11 **Q.** I guess -- I guess my question is on December eighth
09:39:14 do you remember whether or not you knew that you were going
09:39:18 to be assigned in Onondaga County?

09:39:20 **A.** No.

09:39:21 **Q.** In ninety-five.

09:39:21 **A.** I did not know that. I -- I suspected it, but I
09:39:25 didn't know it.

09:39:26 **Q.** Okay, I want to show you what's been received as
09:39:30 People's -- or excuse me, Defendants Exhibit 6. If you
09:39:34 could turn to page fourteen and review that to yourself.

09:39:37 THE COURT: Page fourteen, Mr. Moody, you
09:39:39 said?

09:39:40 MR. MOODY: Fourteen.

(Whereupon, there was a pause in the
09:39:42 proceeding).

09:39:42 **A.** All right, I've read it.

09:40:06 **Q.** Okay, and it seems to me that at that point in time
09:40:08 you were in fact -- does that refresh your recollection as
09:40:11 to whether you were told you would be in Onondaga County in
09:40:14 ninety-five?

09:40:15 **A.** No, it's -- that -- that transcript indicates what I
09:40:20 conveyed to the lawyers, that there was a significant
09:40:23 possibility that I would be not in this county, but as far
09:40:27 as I was concerned, as long as I was here, the case was
09:40:30 mine.

09:40:30 **Q.** Now you mentioned that at some point in time you
09:40:36 had -- after this date you had no further contact with the
09:40:39 case, is that accurate?

09:40:41 **A.** I don't have any recollection of having further
09:40:43 contact with the case.

09:40:44 **Q.** Now you mentioned that -- that you set a discovery
09:40:51 deadline and you believed it to be December thirtieth, is
09:40:54 that accurate?

09:40:55 **A.** My recollection is -- actually to be honest about
09:40:59 it, my recollection is I would say refreshed by what I read
09:41:05 in the transcript, and I think that was the date that it
09:41:08 showed.

09:41:10 **Q.** I apologize. Giving you again Exhibit 6, if you
09:42:07 could turn to page twelve on that and review that to
09:42:21 yourself and just let me know when you're done.

09:42:23 (Whereupon, there was a pause in the
09:42:55 proceeding.)

09:42:55 **A.** All right, I've reviewed it.

09:42:57 **Q.** Okay, and then if you could turn to page sixteen and
09:43:00 seventeen and review those as well.

09:43:02 (Whereupon, there was a pause in the
09:43:04 proceeding.)

09:43:04 **A.** Okay.

09:43:47 **Q.** Doesn't it appear from those -- review of those
09:43:50 documents that it was actually January thirtieth that was
09:43:53 the next -- was the next going to be the Court date for the
09:43:54 determination of whether all the discovery had been turned
09:43:57 over and not December thirtieth?

09:44:26 **A.** Mark, I see where Donald says he can have the stuff
09:44:29 by the sixteenth of December. Where is it?

09:44:30 **Q.** Page seventeen.

09:44:31 **A.** Okay, all right. Hold on.

09:44:33 **Q.** About lines say two through ten.

09:44:40 **A.** All right, in response to a statement that Mr. Dodd
09:44:48 made to me, I said, "So it's not going to be a problem for
09:44:54 the sixteenth or the end of the year?"

09:44:56 **Q.** Um hum, keep going.

09:44:59 **A.** Right, you're correct. January thirtieth was the
09:45:06 report date. I -- you are correct.

09:45:08 **Q.** Now, and then at some point either on January

09:45:13 thirty-first or February second was when you found out that
09:45:17 you would not be handling the case any more, is that
09:45:23 accurate or you don't remember?

09:45:26 **A.** I mean I --

09:45:28 **Q.** Now --

09:45:30 **A.** I can't tell you that, Mr. Moody.

09:45:32 **Q.** Moving backwards now on -- if you look at the -- on
09:45:36 page sixteen, or excuse me, on page twelve from that you
09:45:51 recommended thirty days, and it was DA Dodd, former DA
09:45:55 Dodd, then Chief Assistant Dodd, who said it wouldn't take
09:45:58 that long, is that accurate?

09:45:59 **A.** I'm sure that's what -- yes.

09:46:01 **Q.** And he actually said that he could have it by the --
09:46:03 and I'm not sure what day of the week December eighth was,
09:46:06 but he said he could have it by the following Friday, is
09:46:10 that accurate?

09:46:11 **A.** He said he'd have it by the sixteenth.

09:46:15 **Q.** On line seventeen through nineteen on page twelve?

09:46:27 **A.** He did, by Friday of next week.

09:46:31 **Q.** Now, you mentioned that at some point in time there
09:46:36 was a discussion about discovery and things. Is that in
09:46:42 this -- this discussion in this date?

09:46:44 **A.** Yes.

09:46:44 **Q.** Was that in chambers or off chambers or both or in
09:46:48 the record or on the record or both?

09:46:55 **A.** I recall what happened. I mean I recall by this
09:46:59 review what happened in open court. My guess would be that
09:47:02 we really didn't have any discussions off the record
09:47:07 vis-a-vis discovery. I mean there may have been -- there
09:47:10 may have been time frame discussions that we may have had,
09:47:15 you know, off the record, but for the most part I would say
09:47:18 that my -- my best -- my best conclusion or estimate would
09:47:24 be that we never really had any discussions in this case
09:47:27 that weren't on the record regarding -- regarding the
09:47:30 substantive case.

09:47:31 **Q.** Now you mentioned that you -- that in this
09:47:37 discussion there was some discussion about the documents
09:47:39 being turned over to Mr. Fahey and -- and the discussion
09:47:43 also includes some discussion about Judge Walsh, it being
09:47:46 turned over to Judge Walsh, is that accurate?

09:47:48 **A.** Yes.

09:47:48 **Q.** And in that discussion, it was also a mention that
09:47:54 the file had been opened to both attorneys to come and view
09:47:58 whenever they wished, is that accurate?

09:48:01 **A.** Mr. Dodd said that. I mean he said it multiple
09:48:04 times.

09:48:05 **Q.** Okay, turning to page eleven in that Exhibit 6, and
09:48:16 if you could just review lines five through say sixteen, or
09:48:28 actually go all the way to twenty-one.

09:48:32 THE COURT: What page, Mr. Moody?

09:48:33 MR. MOODY: Page eleven.
09:48:42 (Whereupon, there was a pause in the
09:48:43 proceeding.)
09:48:43 **A.** All right, I reviewed it.
09:48:44 **Q.** And that -- and that former DA Dodd, judge -- now
09:48:49 Judge Dodd in the Town of Oswego, says that -- that he has
09:48:52 opened up the file to Mr. Walsh, and Mr. Fahey has not
09:48:55 taken advantage of doing the same thing to come view the
09:48:57 file, is that accurate?
09:49:00 **A.** Your -- your summary of what this transcript says,
09:49:10 is it accurate?
09:49:10 **Q.** Yeah.
09:49:11 **A.** I wouldn't -- I wouldn't agree with that.
09:49:13 **Q.** What wouldn't you agree with?
09:49:15 **A.** Well, you said that the file was opened up to him.
09:49:18 This statement says, from Mr. Dodd, that he met with Mr.
09:49:23 Walsh twice, and the words are he reviewed the documents,
09:49:30 and the next statement was Mr. Fahey has not.
09:49:33 **Q.** Well, maybe I go back a little further, maybe I
09:49:38 missed the line, but go up to line three it indicates that
09:49:41 Mr. Walsh has been to our office three times.
09:49:44 **A.** Yes.
09:49:44 **Q.** Okay, and then DA Dodd says I met with him in person
09:49:47 twice.
09:49:48 **A.** Yes.

09:49:48 **Q.** Now that certainly sounds like Mr. Walsh has been to the file to review the document, is that accurate?

09:49:53 **A.** I wouldn't -- I can't make that -- I can't reach that conclusion from this transcript.

09:49:58 **Q.** Now, they were also sending you copies of whatever discovery, is that accurate?

09:50:05 **A.** I can't answer that. I mean I would say I have no record or no -- no recollection of that.

09:50:15 **Q.** Okay, well, if you could turn to page twenty-six and twenty-seven, from line nineteen on page twenty-six to say line eight on twenty-seven.

09:50:39 (Whereupon, there was a pause in the proceeding.)

09:50:40 **A.** Okay.

09:50:41 **Q.** Now you -- in that you say that you have -- "I've got twenty-seven boxes to go through." What did you mean by that?

09:50:48 **A.** There were -- as we sit here -- as I sit here today, I don't remember seeing twenty-seven boxes, and as you're well aware, we used -- continued to use many different courtrooms and chambers, so I'm surmising from this that something must have been delivered to one of the chambers that we used up here, and I indicated in here that how could I schedule any hearings until I reviewed whatever it was that I'd gotten.

09:51:26 **Q.** Now twenty-seven boxes may be hyperbole maybe, an
09:51:30 exaggeration, but there was a voluminous amount of material
09:51:34 that had been sent to you.

09:51:35 **A.** I believe that's a correct statement.

09:51:36 **Q.** Do you know what has happened to that material?

09:51:38 **A.** I have no idea.

09:51:39 **Q.** What would you have done with it after your portion
09:51:43 of the case was over?

09:51:44 **A.** What would I have wanted to do with it or what did I
09:51:52 do with it?

09:51:53 **Q.** May be two entirely different answers but we'll
09:51:56 stick with what you actually did with it.

09:51:59 **A.** I -- to be quite frank, I didn't -- I didn't look at
09:52:06 the stuff then, and I was really waiting for the receipt of
09:52:20 information from the lawyers as to what they were fighting
09:52:22 about if anything because I wasn't going to spend a lot of
09:52:24 time, court time, on items that they had already agreed to
09:52:30 exchange.

09:52:32 **Q.** Well, if, for example, some of the items that are
09:52:40 disputed to have been sent to the defense are in those
09:52:44 items that were sent to you in those however many boxes, if
09:52:48 it wasn't twenty-seven, wouldn't that settle much of this
09:52:52 problem?

09:52:53 MS. PEEBLES: Objection. Speculative.

09:52:55 THE COURT: I'm going to allow it.

09:52:59 **A.** I have to be -- I'm going to have to make -- I'm going to have to make an inquiry of you before I can answer that question because I'm not really sure, I'm not really sure what the problem is. You say it's a problem today.

09:53:22 **Q.** Fair enough.

09:53:22 **A.** I don't know what it is.

09:53:23 **Q.** I can understand, it's a poorly worded question. Sometimes as you probably know, sometimes we assume everybody knows what's going on.

09:53:29 **A.** Well, I never -- you may have, Mark, but I --

09:53:32 **Q.** There were certain documents the defense says were not turned over to them.

09:53:39 **A.** Okay.

09:53:39 **Q.** You're aware, and that -- that constitutes allegedly a Brady violation, is that -- and you having been a judge for so long and a lawyer, you understand.

09:53:51 **A.** You know that is from my reading of this transcript of what I've learned from reading the newspapers on this thing is we as members of this profession, we use terms like Rosario and Brady to identify certain materials or evidence, and we all think we are consistent in understanding what -- what is meant by Brady and Rosario material, but I can tell you right now, Mr. Moody, that in ten years of presence on the bench here, my -- I can say, safely say, that Donald Dodd and I never reached agreement

09:54:38 as to what he considered to be Rosario material and what I considered to be Rosario or Brady material, so I would say to you in answer to your question, if Brady material was not turned over, obviously there's a serious problem.

09:54:54 **Q.** Well, I agree.

09:54:56 **A.** And if it was turned over --

09:54:57 **Q.** If material --

09:54:58 **A.** And if it was turned over, and I received a copy of it, and I could tell you that I did, maybe your -- maybe your problem would be solved.

09:55:09 **Q.** Well, and I agree with you, Brady material wasn't turned over, there's a serious problem, but if, as part of the routine matters that were going on in this case, if documents were also being sent to the Court as well as -- as well as to the defense at the same time, and you had however many boxes of stuff that you had, and it was sent to the Court, certainly that is at least inferential evidence that it was also sent to the defense. Would that be accurate?

09:55:52 **A.** I -- I would answer yes.

09:55:55 **Q.** Now, going back to page eleven on that, on that exhibit, it is indicated there, and if you remember, the DA Dodd, former DA Dodd, said that he had three -- three people working full time to copy this report, is that accurate?

09:56:28 **A.** Yes.

09:56:33 **Q.** Now, turning to the discussion of the -- of the -- on page thirty, starting on page thirty and going over to I think it ends on thirty-two or thirty-three, I guess thirty-three is when I guess your comments finish and then Dodd -- yes, okay, yeah. As you mentioned, there is certainly a discussion, and what, you know, as you mentioned about Brady material, words can mean different things to different people, is that accurate? Well, you mentioned that you and judge -- or excuse me, you and DA Dodd had a difference of opinion on what Brady material meant and what Rosario material meant, is that accurate?

09:57:37 **A.** I agree with that, yes.

09:57:38 **Q.** So fair to say that those two words meant different things to the two of you.

09:57:43 **A.** Well, I -- I took the position that material could be Brady and also at the same time be Rosario and vice versa, and Donald never got my analysis of that concept.

09:58:03 **Q.** I guess what I'm saying to you is that two people can look at the same word and think to themselves that it means two different things, is that fair?

09:58:13 **A.** I --

09:58:13 **Q.** Not necessarily wildly different things, but different shades of something. Kind of like an umpire calling a ball and a strike.

09:58:21 **A.** Well, that's like comparing apples to oranges as far as this is concerned. I mean when -- when you say you as a prosecutor are in possession of Rosario material, and you take the position that that information does not have to be provided until completion of jury selection and before opening arguments which is what the statute I believe says, and therefore, you are reluctant to turn it over, should that, for example, that information contained in a statement from a witness to be called by the People, information that is exculpatory, then it has two components, may be Rosario, but it's also exculpatory, and that means that it should be turned over immediately.

09:59:20 **Q.** I can understand that and I think we're getting a little far afield from what I'm trying to ask. There is a discussion on page thirty through thirty-three of Heidi Allen's status as a confidential informant, and if you just review that and see if that is accurate, and the report of Sergeant Lortie is mentioned.

(Whereupon, there is a pause in the proceeding).

09:59:49 **A.** I've read through thirty-one and thirty-two so what's your question?

10:00:14 **Q.** There's a discussion there about the Sergeant Lortie report and Heidi Allen's status or lack thereof of being a confidential informant, is that accurate?

10:00:26 **A.** Well, I will say this in response, Mark. I attempted on those pages to condense what I understood the situation to be in which I said there is -- it appears to me, or I see there is possibly some factual dispute as to whether or not Sergeant Lortie is correct in his assertions for that which is directed to him. I don't know whether a report exists or not, but Mr. Dodd has indicated he's going to give you the entire file, so if there are reports in the file involving her prior relationship with the police agencies that would be relevant to this proceeding, it's my belief that he's probably going to give it to you.

10:01:37 **Q.** Okay, I understand that's what it said. What I'm trying to get at is the discussion and distinction -- there are -- let me ask it to you this way. There are different types of people who could be classified as confidential informants, is that accurate?

10:01:51 **A.** I don't know. I don't know the answer to that.

10:01:55 **Q.** All right, fair enough.

10:02:05 **A.** I mean I guess, Mark, I could -- I mean I could tell you what I think the term means but --

10:02:13 **Q.** But someone else may think the term means something different.

10:02:17 **A.** Absolutely, absolutely.

10:02:18 **Q.** That's all I was trying to get at.

10:02:20 **A.** Okay.

10:02:55 MR. MOODY: I have nothing further, Judge.
10:03:00 THE COURT: Ms. Peebles?
10:03:01 MS. PEEBLES: I have nothing further. Thank
10:03:03 you.
10:03:03 THE COURT: Judge, you can step down.
10:03:04 THE WITNESS: Thank you very much.
10:03:16 THE COURT: Ms. Peebles.
10:03:17 MS. PEEBLES: We would call Robert Calver.
10:03:44 THE CLERK: Raise your right hand, put your
10:04:09 left on the Bible.
10:04:10 ROBERT CALVER, Called as a witness, having been
10:04:15 duly sworn, was examined and testified as follows:
10:04:15 THE CLERK: Please state your name for the
10:04:19 record.
10:04:19 THE WITNESS: Robert Calver.
10:04:20 THE CLERK: And spell your last name.
10:04:22 THE WITNESS: C as in Charles, A-L-V as in
10:04:25 Victor, E-R.
10:04:27 THE COURT: Mr. Calver, before we start --
10:04:29 THE WITNESS: Good morning.
10:04:30 THE COURT: How are you, sir? Before we start
10:04:31 this morning I'm going to ask you if you consent to
10:04:34 having your testimony -- testimony videotaped and audio
10:04:38 taped.
10:04:38 THE WITNESS: Certainly.

DIRECT EXAMINATION

10:04:41 BY MS. PEEBLES:

10:04:42 **Q.** Mr. Calver, where do you currently reside?

10:04:45 **A.** Hobe Sound, Florida.

10:04:47 **Q.** And how long have you resided in Florida?

10:04:48 **A.** Approximately four years.

10:04:49 **Q.** And prior to residing in Florida, where did you
10:04:53 live?

10:04:53 **A.** In Manlius, New York.

10:04:55 **Q.** What is your current occupation?

10:04:58 **A.** Private investigator.

10:05:00 **Q.** How many years have you been working as an
10:05:02 investigator?

10:05:03 **A.** Twenty-five.

10:05:04 **Q.** How long have you been a licensed private
10:05:08 investigator?

10:05:09 **A.** Twenty-five.

10:05:10 **Q.** And what type of cases have you investigated
10:05:12 throughout the years?

10:05:13 **A.** Mostly insurance fraud for large corporate entities
10:05:19 and domestic files and just about every, runs a gamut, just
10:05:28 about everything.

10:05:29 **Q.** Are you currently licensed?

10:05:31 **A.** Yes.

10:05:31 **Q.** Now, when you lived in Syracuse, New York area and

10:05:34 Manlius area, did you do any investigative work on behalf
10:05:37 of Gary Thibodeau?

10:05:38 **A.** Yes.

10:05:39 **Q.** I'm going to ask you some questions about the
10:05:40 investigation you did for Gary Thibodeau. Who hired you?

10:05:44 **A.** Joseph Fahey, Judge Fahey.

10:05:48 **Q.** Do you recall at what stage of the proceedings you
10:05:51 were involved in when you were hired to investigate the
10:05:54 case against Gary Thibodeau?

10:05:56 **A.** From inception.

10:05:57 **Q.** Was anyone else working with you?

10:05:59 **A.** I had -- at that time I was married and my -- my
10:06:03 former was involved in the business and she had something
10:06:06 to do with the file too.

10:06:08 **Q.** Were you also doing any investigative work for Mr.
10:06:11 Walsh who was representing Richard Thibodeau?

10:06:13 **A.** Yes.

10:06:14 **Q.** Now, what tasks were you assigned to do when you
10:06:19 were hired to investigate the case for Gary Thibodeau?

10:06:22 **A.** Interview witnesses, locate witnesses, serve
10:06:26 paperwork, review files, pick up boxes of information, just
10:06:30 about everything that they needed.

10:06:32 **Q.** And did there come a time when you were asked to
10:06:36 investigate information concerning whether or not Heidi
10:06:40 Allen had actually been an informant?

10:06:42 **A.** I -- I -- yes, I did. I did get hearsay regarding that situation.

10:06:52 **Q.** And did you uncover anything that revealed that Heidi Allen was actually an informant?

10:06:58 **A.** No.

10:06:58 **Q.** Did you receive any reports concerning whether or not Heidi Allen was an informant?

10:07:06 **A.** No.

10:07:06 MS. PEEBLES: No further questions.

10:07:21 THE COURT: Mr. Moody?

10:07:23 MR. MOODY: Yes, Judge. One second.

(Whereupon, there was a pause in the proceeding). 10:07:39

10:07:39 THE COURT: Mr. Calver has a bad ear infection in his left ear so he may be turning his head to his right ear, okay. Speak loudly.

10:07:48 MR. MOODY: Try to speak loudly.

CROSS-EXAMINATION

BY MR. MOODY:

10:07:52 **Q.** You mentioned that you had done work for both Judge Fahey and Judge Walsh.

10:07:59 **A.** Correct.

10:08:00 **Q.** Okay, and on the same case, on both of Richard Thibodeau's case and Gary Thibodeau's case.

10:08:06 **A.** Correct.

10:08:06 **Q.** Both involving the case involving the disappearance and abduction of Heidi Allen.

10:08:12 **A.** Correct.

10:08:12 **Q.** And so fair to say that Judge Walsh and Judge Fahey were working together and sharing documents, sharing your services, that kind of thing?

10:08:22 **A.** Yes, I would say so.

10:08:24 **Q.** Okay, fair to say then that -- that they would have meetings I assume with you to save time at the same time.

10:08:31 **A.** Yes.

10:08:31 **Q.** And you would be providing them your reports?

10:08:35 **A.** Yes.

10:08:36 **Q.** Either together or the same duplicate reports. Fair to say then that they were -- together they would be reviewing files, documents, things that had been disclosed to them?

10:08:49 **A.** Between the two of them?

10:08:51 **Q.** Or in your presence between the two of them.

10:08:53 **A.** No, usually it was -- it was never between the two of them while I was present. They were -- I would meet with each of them separately.

10:09:01 **Q.** Do you have any knowledge whether the two of them ever met say at either Judge Fahey's house, Judge Fahey's office or Judge Walsh's house or Judge Walsh's office?

10:09:11 **A.** No, I do not.

10:09:12 **Q.** You have no knowledge. Now you said that you had never seen or found any reports involving her being a confidential informant, is that accurate?

10:09:21 **A.** Correct.

10:09:21 **Q.** Now, I want to show you what's been marked as Defendant's Exhibit 5. If you could review that -- I believe it's ten pages, if you could review that.

10:09:51 (Whereupon, there was a pause in the proceeding.)

10:11:48 **Q.** After reviewing this exhibit, had you ever seen any of the -- any of the pages in this exhibit?

10:11:57 **A.** I, you know, it's familiar, but it's -- at the same time I can't say that I've reviewed that particular information.

10:12:05 **Q.** Well, turning to page seven on that document, this contains a report or a narrative more precisely of a Deputy Richard Curtis, is that accurate?

10:12:23 **A.** Yes.

10:12:23 **Q.** And do you remember in regards to the Heidi Allen case who Deputy Richard Curtis was and what his importance was?

10:12:33 **A.** I wasn't personally familiar with him, no.

10:12:36 **Q.** Well, I'm just referring to the case. You may not be personally familiar with him.

10:12:39 **A.** Only by name, yes.

10:12:41 **Q.** Okay, he was the first deputy on the scene, is that
10:12:44 accurate?
10:12:45 **A.** Yes.
10:12:45 **Q.** Okay, and had you seen that report?
10:12:52 **A.** It's familiar but not totally.
10:12:56 **Q.** When you say familiar, not totally, does that mean
10:12:59 you've seen it but you don't remember it or --
10:13:01 **A.** Yes.
10:13:03 **Q.** And if I could have it back for just one second.
10:13:06 **A.** Sure.
10:13:07 **Q.** Turning to page one on the document, do you
10:13:25 recognize whether you had ever seen that page?
10:13:35 **A.** No. It's a standard incident report. I may have
10:13:38 seen it, I may not have seen it.
10:13:39 **Q.** Well, in that report it indicates does it not the
10:13:43 time of occurrence between 7:45 to 7:55, is that accurate?
10:13:48 **A.** Yes.
10:13:48 MS. PEEBLES: Objection. How is this
10:13:50 relevant?
10:13:50 THE COURT: Where are we going with this, Mr.
10:13:52 Moody?
10:13:53 MR. MOODY: I'll get to it in a second, Judge,
10:13:55 if I could just --
10:13:55 THE COURT: How about quickly. I'll allow it.
10:13:57 **Q.** Is that what it says?

10:13:58 **A.** Yes.

10:13:58 **Q.** Okay, critical to the case involving the Thibodeaus was the time frame between 7:42 when the last sale was made, admittedly by -- to Richard Thibodeau, is that accurate?

10:14:10 MS. PEEBLES: Objection.

10:14:11 THE COURT: Both approach please.

10:14:14 (Whereupon, there was an off the record discussion at the bench.)

10:15:42 **Q.** I'll take that back.

10:15:48 THE COURT: Thank you.

10:15:49 **Q.** Now you mentioned that you were working for both Judge Walsh and Judge Fahey and that you had been asked at one point by Judge Fahey to investigate whether or not Ms. Allen had ever been a confidential informant, is that accurate?

10:16:08 **A.** No, I was not asked about it. I -- I heard rumors about it. I hadn't seen any forms or any information regarding her status as a confidential informant.

10:16:17 **Q.** I believe the question you were asked on direct was whether you were asked to investigate it, and your answer was that you had never seen any documents, is that accurate, or am I misunderstanding the question that was asked?

10:16:28 **A.** I think you're misunderstanding.

10:16:29 **Q.** Now, after the trial of Gary Thibodeau, did you continue to work with Judge Walsh?

10:16:37 **A.** Yes.

10:16:38 **Q.** And during the course of the time that you met with Judge Walsh, did he -- he ever show you any documents concerning Heidi Allen's -- Heidi Allen's status as a confidential informant?

10:16:53 **A.** No.

10:18:28 (People's Exhibit G was marked for identification).

10:18:31 MR. MOODY: Now --

10:18:32 MS. PEEBLES: Can I see it?

10:18:34 MR. MOODY: Sure.

10:18:34 (Whereupon, there was a pause in the proceeding.)

10:18:59 **Q.** Now in the context of working for both Judge Fahey and Judge Walsh, would you provide them with documents about what you had done, reports or however you want to refer to it?

10:19:11 **A.** Yes.

10:19:12 **Q.** Okay, and would you provide them with the same documents or different documents?

10:19:16 **A.** Different.

10:19:16 **Q.** Different documents? I want to show you what's been marked as People's -- hum?

10:19:22 **A.** Depending on the situation.

10:19:24 **Q.** Showing you what's been marked as People's Exhibit
10:19:27 G, I'm going to ask you if you recognize that document.

10:19:55 (Whereupon, there was a pause in the
10:20:00 proceeding.)

10:20:00 **A.** I can't say that I -- that I recognize it a hundred
10:20:03 percent. I don't know. Could have been from my file.

10:20:11 **Q.** All right, when you say could have been, you don't
10:20:13 know one way or the other?

10:20:14 **A.** So long ago I don't recognize it.

10:20:17 **Q.** Fair enough. Now, you mentioned that you -- that
10:20:24 your -- I guess it's your ex-wife was in the business as
10:20:28 well?

10:20:28 **A.** Correct.

10:20:29 **Q.** And her first name is Joyce?

10:20:30 **A.** Joyce.

10:20:31 **Q.** On March fourteenth of 1995, you, Judge Walsh, Judge
10:20:39 Fahey and your ex-wife Joyce came up to the Oswego County
10:20:43 DA's Office to review some video tapes and documents at the
10:20:48 DA's office did you not or the Sheriff's Department?

10:20:51 **A.** I don't recall.

10:20:51 **Q.** You don't recall it?

10:20:53 **Q.** Did you ever go to the Sheriff's Department or the
10:20:57 DA's Office to review any kind of videotapes, audio tapes
10:21:01 or documents?

10:21:01 **A.** No, I don't believe I did. Just to pick up boxes of information.

10:21:05 **Q.** Did you during the course of that time meet Investigator Terry Whipple?

10:21:12 **A.** No.

10:21:13 **Q.** Have you ever met Investigator Terry Whipple?

10:21:20 **A.** No, I don't believe I have.

10:21:22 **Q.** Did you ever have an opportunity to listen to an audio tape of an interview with Robert Baldisaro (ph) done by the Oswego County Sheriff's Department?

10:21:35 **A.** I don't believe I did.

10:21:37 **Q.** Did you look at every document that was in Judge Fahey's file?

10:21:55 **A.** I can't say that I did.

10:21:58 **Q.** Did you look at every document that was in Judge Walsh's file?

10:22:02 **A.** I can't say that I did.

10:22:08 **Q.** Fair to say then one way or the other you can't say what Judge Walsh or Judge Fahey had prior to trial with any certainty.

10:22:17 **A.** I reviewed the materials that we picked up in the boxes of information that were released to us, but it was so long ago I can't say I'm familiar with what was in it.

10:22:29 MR. MOODY: Thank you. No further questions.

10:22:31 THE COURT: Ms. Peebles, anything on redirect?

10:22:34 MS. PEEBLES: Just one followup.

10:22:35 REDIRECT EXAMINATION

10:22:36 BY MS. PEEBLES:

10:22:36 **Q.** After Gary had been convicted, you were going to
10:22:40 help Mr. Walsh prepare for Richard's trial, correct?

10:22:43 **A.** Correct.

10:22:44 **Q.** And what were you focussed on in preparation for
10:22:48 Richard's trial, do you remember?

10:22:49 **A.** I would say just making sure that our files were in
10:22:57 order.

10:22:57 **Q.** Well, did you come across information regarding an
10:23:01 alibi for Richard Thibodeau?

10:23:04 **A.** Yes.

10:23:05 **Q.** And I guess what I'm asking you was -- was this
10:23:11 information new after Gary was convicted? Did a witness
10:23:17 come forward -- let's strike that, did a witness come
10:23:19 forward in Richard's trial that was not part of Gary's
10:23:23 trial that you had to investigate?

10:23:26 MR. MOODY: Objection. Is this a defense
10:23:28 witness or People's witness or --

10:23:30 THE COURT: Can you clarify?

10:23:31 MS. PEEBLES: A People's witness.

10:23:34 THE WITNESS: Yes.

10:23:36 **Q.** Do you remember what you were trying to track down
10:23:38 in preparation for Richard's trial?

10:23:40 **A.** I was trying to track down whether or not he had work records of a particular incident that he -- that we were looking at.

10:23:48 **Q.** And did that develop after Gary's trial?

10:23:52 **A.** Yes.

10:23:53 MS. PEEBLES: No further questions.

10:23:59 THE COURT: Mr. Moody, anything?

10:24:01 MR. MOODY: Yes.

10:24:02 RECROSS-EXAMINATION

10:24:03 BY MR. MOODY:

10:24:04 **Q.** Do you remember the witness, the People's witness that you were referring to or that Ms. Peebles was referring to, do you remember the name of that witness?

10:24:31 **A.** No, I do not.

10:24:32 **Q.** If I told you it was maybe Statton, or Stratton, would that -- does that refresh your recollection?

10:24:37 **A.** No. I'd have to read the file, look it over.

10:24:40 **Q.** Do you remember the name of the witness that you found or the documents that you found, if you found anything, regarding an alibi for Richard?

10:24:49 **A.** I -- I vaguely recall a work record that -- that we investigated, dug up.

10:24:57 MR. MOODY: Thank you. No further questions.

10:24:59 MS. PEEBLES: No further questions.

10:25:00 THE COURT: Sir, you can step down. Thank

10:25:01 you.

10:25:06 THE WITNESS: Sure.

10:25:07 MS. PEEBLES: Call Darlene Upcraft.

10:25:10 THE COURT: Darlene Upcraft please.

10:25:54 THE CLERK: Raise your right hand, place your 10:26:01 left hand on the Bible.

DARLENE UPCRAFT, Called as a witness, having 10:26:03 been duly sworn, was examined and testified as follows:

10:26:03 THE CLERK: Please state your name for the 10:26:10 record.

10:26:10 THE WITNESS: Darlene Ellen Upcraft.

10:26:13 THE CLERK: Spell your last name.

10:26:14 THE WITNESS: U-P-C-R-A-F-T.

10:26:18 THE CLERK: Thank you. Have a seat please.

10:26:20 THE COURT: Ms. Upcraft, safe to assume this 10:26:23 is the first time you have ever testified?

10:26:25 THE WITNESS: Yes.

10:26:25 THE COURT: Are you a little nervous?

10:26:26 THE WITNESS: Yes.

10:26:27 THE COURT: The only thing I'm going to say to 10:26:29 you is you're a very soft spoken person, so make sure 10:26:31 the wall, see the picture of the guy hanging up on the 10:26:34 wall? Make sure he hears you, okay? And the next 10:26:37 question I'm going to have is do you consent to having 10:26:39 your testimony video and audio taped by the media? If

10:26:43 you don't want to you don't have to.

10:26:45 THE WITNESS: No.

10:26:45 THE COURT: She does not consent. Okay. So make sure the gentleman on the wall behind Ms. Peebles hears you.

10:26:52 THE WITNESS: Okay.

10:26:53 THE COURT: Thank you.

DIRECT EXAMINATION

10:26:53 BY MS. PEEBLES:

10:26:54 **Q.** Good morning, Ms. Upcraft.

10:26:55 **A.** Hello.

10:26:56 **Q.** Where have you lived throughout your -- your life?

10:27:01 **A.** Duke Road in Scriba.

10:27:07 **Q.** Are you currently employed?

10:27:08 **A.** I'm retired.

10:27:09 **Q.** What was your occupation?

10:27:10 **A.** I was a quality assurance manager at Anheuser-Busch.

10:27:15 **Q.** And where is Duke Road in relation to 104?

10:27:19 **A.** It intersects 104 in Scriba.

10:27:23 **Q.** So having lived on Duke Road for -- are you -- how old are you?

10:27:26 **A.** Fifty-eight.

10:27:28 **Q.** So for fifty-eight years you're familiar with the intersection of 104 and 104B?

10:27:33 **A.** Yes.

10:27:34 **Q.** Had you ever been to the convenience store located
10:27:38 at the intersection of 104 and 104B?
10:27:40 **A.** Yes.
10:27:40 **Q.** And in 1994, were you familiar with the convenience
10:27:46 store at the time referred to as the D&W?
10:27:49 **A.** Yes.
10:27:49 **Q.** And how often would you drive by or be near the
10:27:54 D&W or go to the D&W?
10:27:58 **A.** A lot.
10:27:58 **Q.** Did you know Heidi Allen?
10:28:00 **A.** No.
10:28:01 **Q.** Do you remember the morning Heidi Allen was
10:28:04 abducted?
10:28:05 **A.** Yes.
10:28:05 **Q.** Do you remember when that was?
10:28:07 **A.** It was Easter Sunday.
10:28:10 **Q.** Did you drive by the D&W Convenience Store the
10:28:15 morning Heidi Allen was abducted?
10:28:16 **A.** Yes.
10:28:17 **Q.** Now I want to ask you some questions about your
10:28:18 observations on Easter Sunday of 1994 when you drove by the
10:28:22 D&W Convenience Store. What time do you recall leaving
10:28:26 your home?
10:28:27 **A.** It was before -- I was going to sunrise service in
10:28:31 New Haven so it was probably before seven o'clock in the

10:28:34 morning.

10:28:34 **Q.** How far was your home from the D&W?

10:28:38 **A.** About four, four and a half miles.

10:28:40 **Q.** Who was with you in the vehicle?

10:28:44 **A.** My son Kevin.

10:28:46 **Q.** Do you recall the weather conditions?

10:28:49 **A.** I know that morning it was gloomy on my way to church.

10:28:53 **Q.** Did you have to drive by the D&W on your way to church?

10:28:57 **A.** Yes.

10:28:57 **Q.** Do -- and you -- you don't recall specifically exactly what time?

10:29:04 **A.** Probably quarter to seven but I'm --

10:29:09 **Q.** Now, when you drove by that morning, what do you recall observing?

10:29:16 **A.** When I went by, I was surprised that D&W was open on Easter Sunday, and I remember looking at it and thinking my son would want to be stopping for a Mountain Dew, and I was like I don't have time, and I remember seeing a white rusty van parked in front of the store.

10:29:40 **Q.** Now when you gesture with your hands, are you suggesting it was perpendicular to the store?

10:29:45 **A.** Yes.

10:29:52 **Q.** After making that observation did you go -- did you

10:29:55 attend your services?

10:29:56 **A.** Yes.

10:29:56 **Q.** And did you have to drive by the D&W after you left
10:30:00 the church services?

10:30:01 **A.** Yes, I did.

10:30:02 **Q.** When you drove by the D&W after you left church, did
10:30:06 you notice anything?

10:30:06 **A.** I didn't. I -- I was thinking I had to get to like
10:30:12 home and church service, I was doing an Easter egg hunt,
10:30:17 and I had a bunch of Easter eggs and I didn't know where I
10:30:20 was going to put them because it was snowing.

10:30:22 **Q.** Well, did you later learn that Heidi Allen was
10:30:24 missing?

10:30:25 **A.** Yes.

10:30:25 **Q.** I want to ask you now some questions about what you
10:30:27 did after you learned Heidi Allen was missing. Did you
10:30:30 talk to anyone from the Sheriff's Department when you
10:30:33 became aware that Heidi Allen was missing?

10:30:36 **A.** Yes.

10:30:37 **Q.** And when did you do that?

10:30:39 **A.** I believe it was that next week they had set up a
10:30:42 command center and had asked for anybody had seen anything
10:30:47 to come out, and I was on my way to ceramics with my friend
10:30:57 Missy and we were talking that we should do it, go, and we
10:30:59 turned around and went. It was an evening. I can't tell

10:31:02 you what evening it was.

10:31:03 **Q.** Do you know whether you signed a statement?

10:31:06 **A.** I believe I did but I can't swear to it.

10:31:10 **Q.** And what did you tell them about your observations?

10:31:14 **A.** I told them that I was on my way to church for
10:31:18 Easter sunrise service and saw a white rusty van parked in
10:31:23 front of the D&W Store.

10:31:26 **Q.** And do you recall specifically who you spoke to?

10:31:29 **A.** No, I don't.

10:31:30 **Q.** After you gave your initial statement or disclosure
10:31:33 at the command center, were you contacted by anyone from
10:31:36 the Sheriff's Department?

10:31:37 **A.** I got a phone call, a message from some law
10:31:43 enforcement, I can't tell you, I don't know for sure if it
10:31:45 was the Sheriff's Department, saying that they wanted me to
10:31:48 call because they wanted to talk about the or to confirm
10:31:53 the van I had seen. Before I called them, a sheriff came
10:32:00 to my house and asked me about the van, and then I had told
10:32:09 him it was a white rusty van is what I saw, and then one
10:32:14 more time I happened to be going to my mailbox and a
10:32:18 sheriff came in and also asked me about the van I had seen.

10:32:25 **Q.** What were they asking you specifically about the
10:32:27 van?

10:32:28 **A.** The color.

10:32:30 THE COURT: Before you go on, you said there

10:32:32 was a second opportunity that a police officer came by
10:32:34 your home when you went to the mailbox?

10:32:36 THE WITNESS: Yes. I mean they were coming
10:32:38 and I just happened to be outside.

10:32:39 THE COURT: Okay.

10:32:40 THE WITNESS: So I knew they were both
10:32:42 sheriffs because of the car.

10:32:43 **Q.** Were they inquiring with regard to anything on the
10:32:48 van other than it being white and rusty?

10:32:51 **A.** They just wanted to confirm that that's what I had
10:32:53 seen.

10:32:54 **Q.** Did they ask you whether the van was black and
10:32:56 white?

10:32:56 **A.** I believe they did the second time.

10:32:59 **Q.** And -- and what did you tell them?

10:33:00 **A.** I said no, it was white and rusty. That's all I
10:33:07 remember seeing.

10:33:07 **Q.** Now, at some point in time did you see the --
10:33:10 Richard Thibodeau's van on the news?

10:33:12 **A.** Yes, following talking to the sheriffs.

10:33:16 **Q.** And was that the van you saw?

10:33:17 **A.** No.

10:33:19 **Q.** I'm going to hand you what's been marked as
10:33:23 Defendant's Exhibit 19 and ask you to take a look at that
10:33:27 document and turn to the second page.

10:33:35 THE COURT: You said nineteen, Ms. Peebles?

10:33:38 MS. PEEBLES: Yes.

10:33:52 **Q.** Is there anything on that lead sheet that suggests
10:33:55 that you saw anything when you drove by the D&W?

10:33:59 **A.** No.

10:34:00 **Q.** In fact, it indicates that you didn't see anything,
10:34:05 correct?

10:34:05 **A.** Correct.

10:34:14 MS. PEEBLES: I have no further questions.

10:34:26 THE COURT: Are you moving nineteen in? Is
10:34:29 that stipulated to?

10:34:30 MS. PEEBLES: Will you stipulate to this lead
10:34:32 sheet?

10:34:34 MR. OAKES: Yeah.

10:34:35 MS. PEEBLES: Yeah, it's -- we'll move it into
10:34:37 evidence and they're stipulating, Your Honor.

10:34:38 THE COURT: No objection. It's stipulated to.

(Defendant's Exhibit No. 19 was received in evidence).

CROSS-EXAMINATION

10:35:11 BY MR. MOODY:

10:35:11 **Q.** Good morning, Ms. Upcraft.

10:35:12 **A.** Good morning.

10:35:13 **Q.** You said you went to sunrise service?

10:35:15 **A.** Yes.

10:35:15 **Q.** What church did you go to?
10:35:17 **A.** United Methodist in New Haven.
10:35:20 **Q.** And you still go to that church?
10:35:21 **A.** No. Actually I always went to Lycoming church. New Haven and Lycoming had a partnership.
10:35:29 **Q.** Do you know a gentleman by the name of Harold Wiltsie (ph)?
10:35:32 **A.** I know of him.
10:35:34 **Q.** Did he go to -- did he go to that church or how did you know -- how do you know of him?
10:35:40 **A.** I believe it was New Haven church. I've heard the name.
10:35:45 **Q.** Okay, you mentioned that you couldn't remember what time you drove by. Do you remember what time sunrise service starts?
10:35:52 **A.** I don't remember --
10:35:57 **Q.** Now --
10:35:57 **A.** -- exactly.
10:35:57 **Q.** Do you remember giving an affidavit to the defense?
10:36:00 **A.** Yes.
10:36:01 **Q.** A statement?
10:36:01 **A.** Yes.
10:36:02 **Q.** I want to show you what's been marked as Defendant's Exhibit 18 and ask you if you reviewed -- if you could review that to yourself and see if that refreshes your

10:36:10 recollection as to what time you drove by.

10:36:13 **A.** Says 6:30.

10:36:28 **Q.** Okay, does that seem accurate?

10:36:30 **A.** Yes.

10:36:32 **Q.** What -- and now if you remember, Easter Sunday of
10:36:40 1994 was also the beginning of daylight savings time, turn
10:36:44 the clock ahead, do you remember that? Certainly you
10:36:47 wanted to be on time for -- for sunrise service, right?

10:36:50 **A.** Right.

10:36:50 **Q.** So 6:35 would be accurate time because you were
10:36:54 going to go to the sunrise service.

10:36:56 **A.** Right.

10:36:56 **Q.** Seem right? Now showing you what's been admitted as
10:37:00 Exhibit 19, if you could look at that, what time did you
10:37:05 tell the Sheriff's Department or what time did the
10:37:08 Sheriff's Department write down that you passed by the
10:37:10 D&W?

10:37:11 **A.** 6:35.

10:37:12 **Q.** All right. Now, how long does sunrise service last
10:37:20 or did it last on Easter of ninety-four?

10:37:23 **A.** I -- I can't tell you. According to that was half
10:37:28 an hour but --

10:37:28 **Q.** Okay, well, at 6:35 you drove by and you said you
10:37:34 saw a vehicle, I think you described it as a white rusty
10:37:36 van.

10:37:37 **A.** Yes.

10:37:37 **Q.** Okay, and when you drove by at 7:30 approximately, I think that is what you said, about 7:30?

10:37:43 **A.** Right.

10:37:44 **Q.** You didn't see anything.

10:37:45 **A.** No.

10:37:46 **Q.** You didn't see any police tape up?

10:37:48 **A.** No.

10:37:48 **Q.** Accurate?

10:37:49 **A.** No, I saw nothing.

10:37:50 **Q.** You didn't see any vehicles in the -- in the -- to your recollection in the parking lot at all?

10:37:55 **A.** I truly didn't see anything.

10:37:57 **Q.** All right, so and to your knowledge, do you know what -- or do you know what time Heidi Allen would have been -- the last time that Heidi Allen was at the store, at the D&W?

10:38:13 **A.** I don't know.

10:38:15 **Q.** Now, you were -- do you know a Katherine and David, and I may pronounce, mispronounce their last name, but Doushin (ph)?

10:38:25 **A.** Yes, she's my cousin.

10:38:26 **Q.** She was your cousin.

10:38:27 **A.** Yes.

10:38:28 **Q.** And was she right behind you?

10:38:30 **A.** Only because I read that do I remember that.

10:38:33 **Q.** Okay, so they took that down, is that accurate?

10:38:36 **A.** Yes.

10:38:36 **Q.** Okay, and you provided the Sheriff's Department with
10:38:40 her phone, or I guess their phone number more accurately,
10:38:44 is that right?

10:38:44 **A.** I guess.

10:38:46 **Q.** Now, if Heidi Allen was still at the store at 6:30
10:38:56 when you drove by, would that white van have any interest
10:39:01 to you do you think to the police?

10:39:03 MS. PEEBLES: Objection.

10:39:04 THE COURT: Based on?

10:39:06 MS. PEEBLES: Speculation.

10:39:07 THE COURT: Sustained.

10:39:09 MR. MOODY: I have no further questions,
10:39:12 Judge.

10:39:12 THE COURT: Any redirect?

10:39:14 MS. PEEBLES: Nothing. Thank you.

10:39:15 THE COURT: You did a nice job. You can step
10:39:18 down.

10:39:18 THE WITNESS: Thank you.

10:39:22 THE COURT: Ms. Peebles?

10:39:27 MS. PEEBLES: Tyler Hayes.

10:40:03 THE CLERK: Raise your right hand, put your
10:40:04 left on the Bible.

10:40:06 TYLER HAYES, Called as a witness, having been duly
10:40:14 sworn, was examined and testified as follows:

10:40:14 THE CLERK: Please state your name for the
10:40:15 record.

10:40:15 THE WITNESS: Tyler Hayes.

10:40:16 THE CLERK: Spell your first name.

10:40:18 THE WITNESS: T-Y-L-E-R.

10:40:19 THE CLERK: And your last name.

10:40:20 THE WITNESS: H-A-Y-E-S.

10:40:21 THE CLERK: Have a seat please.

10:40:23 THE COURT: Mr. Hayes, before we go forward,
10:40:25 I'm going to ask you do you consent to having your
10:40:27 testimony video and audio taped?

10:40:29 THE WITNESS: I'd rather not.

10:40:30 THE COURT: Thank you. Ms. Peebles?

10:40:34 MS. PEEBLES: Yes.

DIRECT EXAMINATION

BY MS. PEEBLES:

10:40:34 **Q.** Mr. Hayes, where are you currently employed?

10:40:36 **A.** I'm employed by Barber Corporation. It's a general
10:40:39 and civil contractor.

10:40:40 **Q.** What position do you hold there?

10:40:42 **A.** I'm a superintendent for 'em.

10:40:44 **Q.** And how long have you worked there?

10:40:46 **A.** Five years.

10:40:47 **Q.** Do you live in the Oswego County area?
10:40:50 **A.** I do.
10:40:51 **Q.** And how long have you lived in the area?
10:40:53 **A.** My whole life.
10:40:54 **Q.** Have you ever been to a place called the Liberty
10:40:57 Bell Tavern?
10:40:58 **A.** I have.
10:40:59 **Q.** And how often would you go to the Liberty Bell
10:41:02 Tavern?
10:41:02 **A.** Every now and again. It was only opened for a short
10:41:09 time, so when I was home from college or whatever we
10:41:12 would -- it was right up the road from my girlfriend's
10:41:14 father's so we would go there every now and again.
10:41:17 **Q.** Did you ever have a confrontation with anyone when
10:41:21 you were at the Liberty Bell Tavern?
10:41:22 **A.** I did.
10:41:23 **Q.** I'm going to ask you some questions about a time
10:41:25 when you were at the Liberty Bell Tavern in the year 2000.
10:41:30 Do you recall having a confrontation with an individual
10:41:34 named Michael Bohrer?
10:41:36 **A.** Yes.
10:41:37 **Q.** And do you recall approximately when that was?
10:41:46 **A.** Looking back on it, I know it's been quite some --
10:41:53 some time, I believe it was in November of 2000, it was
10:41:56 my -- now, at the time it wasn't, I wasn't married, but now

10:42:02 it's my father-in-law's birthday and we were out
10:42:06 celebrating his birthday there.

10:42:07 **Q.** Now, so you were with a group of people?

10:42:09 **A.** Yes.

10:42:09 **Q.** That you recall.

10:42:10 **A.** Yes.

10:42:11 **Q.** And were people drinking?

10:42:13 **A.** Yes.

10:42:13 **Q.** And you were drinking?

10:42:15 **A.** I was.

10:42:15 **Q.** And can you explain what happened that night at the
10:42:20 Liberty Bell Tavern?

10:42:22 **A.** My wife and some of her friends were sitting at the
10:42:29 bar down on the far end there, and I was sitting with some
10:42:35 other friends and her father, and she came to me and said,
10:42:39 you know, this guy was bothering them at the end of the bar
10:42:45 about, you know, saying he had information about the Heidi
10:42:49 Allen case, so I went down to confront him to, you know,
10:42:54 kind of get him -- run him off, to get him away from my
10:42:58 wife and her friends because, you know, they were -- he was
10:43:01 bothering them, and he -- he told me that, you know, he had
10:43:09 information regarding the case, and I says yeah, I -- I --
10:43:15 I knew about the case, I says they -- they arrested two --
10:43:22 two people for it or whatever, and I couldn't remember the
10:43:25 names, and he said yeah, it was the Thibodeaus, he says

10:43:29 well, that's -- they're not the ones that did it. He says I know who did it and I know the whereabouts of Heidi Allen's body.

10:43:37 **Q.** Did you do anything with that information?

10:43:40 **A.** Yes, I --

10:43:41 **Q.** What did you do?

10:43:42 **A.** I called the police, let them know.

10:43:45 **Q.** Did you call the police that very day?

10:43:47 **A.** Yeah. When I got back to my father-in-law's I -- 10:43:51 because I got thinking about it and I said if there, you 10:43:56 know, if this guy is not lying or whatever, somebody should 10:44:01 certainly know that there's, you know, an innocent man in 10:44:08 jail, and I thought that they -- at this time also, you 10:44:14 know, later in -- after the initial conversation, I had a 10:44:20 further conversation with him in the men's room, and he 10:44:25 was -- he was, you know, he got to sobbing and stuff like 10:44:28 that and was saying how, you know, he had dealt with, you 10:44:32 know, been dealing with this too long and he didn't want to 10:44:36 deal with it any more, and I said well, you know, if that's 10:44:39 the case, you really need to, you know, go talk to the 10:44:43 police, and so after he -- he left, he left the bar, I -- 10:44:53 when I got back home to my father-in-law's I called the 10:44:57 police, I believe I called 911 just and told them what the 10:45:04 situation was and I -- I forget who they put me in touch 10:45:07 with, whether it was the sheriffs or the troopers, but I

10:45:11 recall giving a statement over the phone that night.

10:45:15 **Q.** Did you ever hear back from anyone from the Oswego
10:45:18 County Sheriff's Department after you made that phone call?

10:45:21 **A.** No, I did not.

10:45:23 **Q.** I'm going to hand you what's been marked as Defense
10:45:26 Exhibit 21 and ask you to look at that document.

10:45:31 (Whereupon, there was a pause in the
10:45:49 proceeding.)

10:45:49 **Q.** Is that the information you provided to the Oswego
10:45:52 County Sheriff's Department?

10:45:53 **A.** Yeah, yeah, I would say.

Q. Thank you.

10:45:57 **A.** I mean that's the gist of it.

10:45:59 **Q.** And you've never heard back from them since you gave
10:46:01 that in the year 2000, correct?

10:46:03 **A.** That is correct.

10:46:04 MS. PEEBLES: Thank you. No further
10:46:06 questions.

10:46:09 MS. BIANCO: One minute.

10:46:15 MS. PEEBLES: We'll offer that into evidence.
10:46:17 No objection to that, Your Honor, that's Exhibit 19.

10:46:20 THE COURT: Nineteen? I thought it was
10:46:22 Exhibit 21.

10:46:23 MS. PEEBLES: Or twenty-one, I'm sorry,
10:46:24 twenty-one.

10:46:24 THE COURT: No objection?

10:46:25 MR. OAKES: Actually can I just look at it for a moment? I'm sure it is what it is.

10:46:29 THE COURT: Sure. Please approach, Mr. Oakes, and retrieve it.

10:46:40 MR. OAKES: Thank you, Your Honor.

10:46:40 THE COURT: No objection?

10:46:41 MR. OAKES: No, not at all.

10:46:42 THE COURT: Twenty-one is in with no objection.

(Defendant's Exhibit No. 21 was received in evidence).

10:46:53 THE COURT: Mr. Moody, Mr. Oakes?

10:46:55 MR. OAKES: My turn.

10:46:57 CROSS-EXAMINATION

10:46:57 BY MR. OAKES:

10:46:58 **Q.** Good morning again, Tyler.

10:47:04 **A.** Good morning.

10:47:04 **Q.** In the interests of full disclosure, Tyler, you and I went to school together?

10:47:11 **A.** Yes, sir.

10:47:11 **Q.** You're two years behind me?

10:47:13 **A.** Yep.

10:47:13 **Q.** And I graduated with your older brother Travis, is that correct?

10:47:17 **A.** That's correct.

10:47:18 **Q.** How's he doing?

10:47:19 **A.** He's doing good.

10:47:20 **Q.** Good. Now Tyler, you said this was around November 2000 when you were out?

10:47:27 **A.** Yeah. It was -- it was in November because it was my father-in-law's birthday and we were out for a few cocktails on his birthday.

10:47:35 **Q.** How old would you have been at that time, Tyler?

10:47:37 **A.** Twenty-three.

10:47:38 **Q.** Okay, maybe a little wilder back then?

10:47:42 **A.** Quite a bit actually, yeah.

10:47:45 **Q.** Did you have a drink or two that night?

10:47:47 **A.** Sure did.

10:47:48 **Q.** By that point, the point you were talking with Mr. Bohrer, how many beers would you -- well, were you drinking beer?

10:47:56 **A.** Probably, yes.

10:47:57 **Q.** How many beers would you say you had?

10:47:59 **A.** Boy, I mean hard to say. Fourteen years ago I mean I'm sure I probably had a few. I couldn't say accurately how many.

10:48:11 **Q.** Okay, fair to say you might have been intoxicated at that point?

10:48:15 **A.** This was early, this was soon as we got there so no,

10:48:19 I wasn't intoxicated. I'm sure I was drinking but I wasn't
10:48:22 intoxicated because it was -- it was actually early on when
10:48:26 we got there, and I stayed a bit later, you know, and
10:48:30 then -- and then left, so yeah, I'm sure I was drinking,
10:48:36 but I -- during that conversation was I intoxicated? I
10:48:41 don't think that I was too awful bad, no, because it was --
10:48:45 it was early on in the night.

10:48:46 **Q.** Okay, but you did keep drinking that night as the
10:48:51 night went on?

10:48:51 **A.** Yes.

10:48:51 **Q.** Maybe got intoxicated that night?

10:48:54 **A.** Chances are, yeah.

10:48:56 **Q.** Tyler, have you ever had the experience where you do
10:48:59 something and you get drinking and then maybe the next day
10:49:03 you don't recall it as well because you'd been drinking?

10:49:06 **A.** Oh, yeah, sure.

10:49:10 **Q.** Okay. Tyler, Ms. Peebles showed you Exhibit 21.

10:49:17 MR. OAKES: May I approach, Your Honor?

10:49:18 THE COURT: Absolutely.

10:49:19 **Q.** Thank you. Tyler, again, that -- you probably don't
10:49:26 know what it is, it's a lead sheet from the Sheriff's
10:49:29 Department.

10:49:29 **A.** Um hum.

10:49:29 **Q.** Basically when somebody calls in on a case they
10:49:33 write down the information. Would you look at the second

10:49:35 page of that and when you're set just let me know.

10:49:46 (Whereupon, there was a pause in the
10:49:50 proceeding.)

10:49:50 **A.** Yeah.

10:49:51 **Q.** And I think you told Ms. Peebles that second page
10:49:55 pretty fairly summarizes or captures what you told the
10:49:58 officer that night?

10:50:01 **A.** Yes.

10:50:02 **Q.** Okay. Actually I'm just going to steal it back from
10:50:07 you if I can. And again, it -- so in this lead sheet it
10:50:15 says, "Michael Bohrer was in Liberty Bell tonight bragging
10:50:19 he knows where Heidi's body is?"

10:50:21 **A.** Um hum.

10:50:23 **Q.** That's what it says?

10:50:23 **A.** I mean there -- like I say, it was quite a few years
10:50:26 ago, but that was certainly part of -- the main part of the
10:50:29 conversation, yes.

10:50:30 **Q.** Okay.

10:50:30 THE COURT: Could counsel please approach?

10:50:32 **A.** Seems as though it was more than that though.

10:50:34 THE COURT: Hold on, sir. Could counsel
10:50:35 please approach?

10:50:37 MR. OAKES: Certainly.

10:50:38 (Whereupon, there was an off the record
10:50:38 discussion at the bench).

10:51:59 THE COURT: I'm sorry, I did not mean to
10:52:02 interrupt you, Mr. Oakes.

10:52:03 MR. OAKES: No, perfectly fine, Your Honor.

10:52:04 **Q.** So Travis, again --

10:52:06 **A.** Tyler. It happens all the time.

10:52:09 **Q.** As you're older you look more like your brother
10:52:12 so -- Tyler, that was about thirteen years ago then when
10:52:16 that incident took place?

10:52:18 **A.** Closer to fourteen I would say wouldn't it?

10:52:23 **Q.** Yeah, actually fourteen.

10:52:25 **A.** November of 2000, yeah, a little over, about a
10:52:28 hundred and seventy months ago.

10:52:31 **Q.** How many days is that, rain man?

10:52:35 **A.** It take me a second.

10:52:38 **Q.** So it's been fourteen years. Would you say that
10:52:41 your memory may have faded a little bit over fourteen
10:52:44 years, might not recall things as well as you did fourteen
10:52:47 years ago?

10:52:47 **A.** No, but I mean in this case when somebody makes
10:52:50 admissions to a murder, it's not like oh, I forgot where I
10:52:54 put my car keys, that type of situation, so no, I mean yes,
10:52:58 but, you know, I'm certain -- I'm very clear on -- on what
10:53:01 was said that night because it was, you know, something
10:53:05 that, you know, is substantial, you know.

10:53:08 **Q.** Okay, and because it's substantial, because it's

10:53:11 important, you want to make sure to get it correct, right?
10:53:14 **A.** Yeah.
10:53:15 **Q.** Okay. Now Tyler, when the news broke this summer, I
10:53:20 think it was late July, the Post-Standard, Syracuse.com
10:53:24 started running a bunch of articles, you saw it online or
10:53:29 in the news?
10:53:29 **A.** Um hum.
10:53:30 **Q.** And did that trigger the memory of this event for
10:53:33 you?
10:53:33 **A.** No. What actually triggered the memory was my wife
10:53:37 saw it on the news and she said remember that time that
10:53:40 fellow, because I didn't really know, I don't know the guy,
10:53:43 I knew that he owned a computer store across the tracks
10:53:47 from my father-in-law's place, and she said remember that
10:53:51 guy that time at the Liberty Bell? He's the one that
10:53:55 said -- he made those admissions of the Heidi Allen case,
10:53:58 he's on the news. I said you got to be kidding me. So
10:54:01 from there, I then read the papers and everything like
10:54:03 that, and then, you know, that's when I contacted your
10:54:06 office as well as Investigator Peebles.
10:54:12 **Q.** Okay, and actually you met with Ms. Peebles and gave
10:54:16 her an affidavit regarding this case, correct?
10:54:19 **A.** I did.
10:54:20 **Q.** And when you met with Ms. Peebles and gave the
10:54:27 affidavit --

10:54:30 MR. OAKES: Actually may I have it marked
10:54:32 please?

10:54:32 (People's Exhibit H was marked for
10:54:58 identification).

10:54:58 **Q.** Now Tyler, back up for a moment. Again, you said
10:55:02 the gentleman, Mr. Bohrer, made a number of statements in
10:55:05 the Liberty Bell?

10:55:06 **A.** Um hum.

10:55:06 **Q.** Again, he indicated to you I think you said that he
10:55:09 had info on the case?

10:55:11 **A.** Yeah. Well, he said he knew the whereabouts of
10:55:15 Heidi Allen's body was one thing he said, and he also made
10:55:19 admissions that he knew, you know, who killed her.

10:55:23 **Q.** Okay, did he tell you who had killed her?

10:55:26 **A.** No.

10:55:26 **Q.** Did he say that he had killed her?

10:55:28 **A.** No.

10:55:28 **Q.** Did he say that he personally participated in it?

10:55:31 **A.** No.

10:55:31 **Q.** Again, when he said that he knew where she was
10:55:35 buried, did he say where?

10:55:36 **A.** No.

10:55:36 **Q.** Did he say who put her there?

10:55:38 **A.** No.

10:55:38 **Q.** Did he explain to you what his personal basis of

10:55:42 knowledge was, how he knew that?

10:55:44 **A.** No. I mean no. He just, you know, that's why, you know, for the most part, when this all occurred in the bar, it was like it was upsetting to people, people didn't want to hear it, you know.

10:55:58 **Q.** Absolutely.

10:55:59 **A.** And that was the, you know, ultimately is why he left because I actually said hey, I think it would be in your best interest to probably leave.

10:56:10 **Q.** Did you say that quietly?

10:56:12 **A.** I don't know if it was quite that quietly, but it was -- it was assertive.

10:56:19 **Q.** You made your point.

10:56:20 **A.** Yeah.

10:56:21 **Q.** Tyler, aside from that night, you ever been in bars any other nights drinking?

10:56:28 **A.** Sure.

10:56:29 **Q.** You ever been out to a bar and had a loud mouth at the end of the bar who is talking about stuff?

10:56:34 **A.** Yep.

10:56:35 **Q.** Maybe just talking about stuff that he's got no idea what in the world he's talking about but he's just kind of running his mouth?

10:56:43 **A.** Sure.

10:56:44 **Q.** Okay. Tyler, again, you met with Ms. Peebles I

10:56:49 think it was July twenty-ninth of 2014 about this case,
10:56:53 correct?

10:56:54 **A.** It could have been, yeah, I know it's sometime in
10:56:57 the summer. I don't know the exact date.

10:56:59 **Q.** And Tyler, if I showed you your affidavit, would it
10:57:05 refresh your recollection?

10:57:06 **A.** Sure.

10:57:06 **Q.** Okay. Actually I'll just leave that for you, Tyler.
10:57:18 Tyler, you met with Ms. Peebles herself?

10:57:21 **A.** Yes.

10:57:22 **Q.** Attorney Peebles, okay. And did she explain to you
10:57:25 the importance of this case and that she's representing Mr.
10:57:28 Thibodeau?

10:57:29 **A.** She didn't go into depth about any importance of the
10:57:35 case, she just, you know, asked me if I would sign an
10:57:40 affidavit on -- on what I knew of the case.

10:57:43 **Q.** Okay, who typed up the affidavit?

10:57:46 **A.** I have no idea.

10:57:47 **Q.** Okay, was it typed in your presence or while you
10:57:51 were there?

10:57:51 **A.** Actually, no, it was not typed in my presence while
10:58:00 I was there. I spoke with her prior to that, and she typed
10:58:06 up this, met me, discussed -- discussed the affidavit with
10:58:10 me, and then if it was accurate, had me sign it.

10:58:16 **Q.** Okay, and she explained to you that because it was

10:58:19 going to be filed in court proceedings, she wanted you to
10:58:21 review it to make sure it was accurate?

10:58:23 **A.** Yes.

10:58:23 **Q.** You read it, Tyler?

10:58:24 **A.** I did.

10:58:25 **Q.** Okay, and actually your mom works as a legal
10:58:28 secretary doesn't she?

10:58:29 **A.** She does.

10:58:29 **Q.** So you understand the importance of documents like
10:58:32 this and it's important to get them right?

10:58:34 **A.** Um hum.

10:58:35 **Q.** Okay, and again, that document that's in front of
10:58:37 you, you reviewed it and read it before you signed it?

10:58:40 **A.** I did.

10:58:40 **Q.** Because you knew it was important?

10:58:42 **A.** Um hum.

10:58:43 **Q.** Okay. Tyler, where in your affidavit did you put
10:58:47 that Mr. Bohrer said the Thibodeaus weren't guilty or the
10:58:52 Thibodeaus weren't involved. Is that in your affidavit?

10:58:55 **A.** No, that's not in there.

10:58:56 **Q.** Okay, and again, you testified today that at one
10:59:01 point later he was sobbing to you, said he was dealing with
10:59:05 this too long, he didn't want to deal with it any more.
10:59:08 Can you show us where is that in your affidavit?

10:59:10 **A.** That wasn't in there either. I -- I didn't get

10:59:13 in -- it wasn't in depth, I didn't get that far in depth
10:59:18 with the affidavit when I reported that to her, I just told
10:59:21 her the gist of what I knew on -- on the affidavit.

10:59:29 **Q.** But when you spoke with Ms. Peebles, certainly she
10:59:32 had asked you questions, "did he say anything more, did he
10:59:35 say anything else," she asked you those types of questions
10:59:37 didn't she?

10:59:39 **A.** She -- she asked me what, you know, what I knew and
10:59:45 I told her. She didn't really continue to ask me if I knew
10:59:48 any more, no.

10:59:49 MR. OAKES: Okay. Okay. No further
10:59:52 questions, Tyler. Thank you. Actually can I grab that
10:59:54 from you please?

10:59:54 THE WITNESS: Sure.

10:59:56 MR. OAKES: Thank you.

10:59:57 THE WITNESS: Um hum.

10:59:59 MS. PEEBLES: No further questions.

11:00:00 THE COURT: Okay, any objection to moving in?

11:00:03 MS. PEEBLES: No objection.

11:00:04 THE COURT: Okay.

11:00:06 MR. OAKES: Oh, actually I wasn't even
11:00:09 offering it, Your Honor. For some reason I was
11:00:11 thinking it was accepted.

11:00:13 THE COURT: Okay.

11:00:14 MR. OAKES: Thank you.

11:00:16 THE COURT: You can step down, sir.

11:00:18 THE COURT: Ms. Peebles?

11:00:20 MS. PEEBLES: We're going to call Mr. Steen
11:00:28 next so --

11:00:29 THE COURT: Mr. Miles, is your client ready?

11:00:31 MR. MILES: Judge, I'd like a couple minutes
11:00:32 with him.

11:00:33 THE COURT: So why don't we recess. Ten
11:00:36 minutes enough, Mr. Miles?

11:00:37 MR. MILES: Yes.

11:00:38 THE COURT: Ten minutes? Ten after eleven?

11:00:41 MS. PEEBLES: That's fine, Judge.

11:00:42 (Whereupon, there was a recess.)

11:13:25 THE COURT: Everybody ready?

11:14:06 MS. BIANCO: Yes, Your Honor.

11:14:07 THE COURT: Ms. Bianco, call your witness
11:14:09 please.

11:14:09 MS. BIANCO: James Steen. I'm not sure if the
11:14:12 microphone is on.

11:15:03 THE COURT: Mr. Steen, we're having a
11:15:04 technical problem right now. Hold on please, sir.

(Whereupon, there was a pause in the
11:16:37 proceeding).

11:16:37 THE COURT: Mr. Steen, please stand up, sir.

11:16:40 THE CLERK: Raise your right hand the best you

11:16:43 can, put your left on the Bible.

11:16:45 JAMES STEEN, Called as a witness, having been duly
11:16:52 sworn, was examined and testified as follows:

11:16:52 THE CLERK: Please state your name for the
11:16:54 record.

11:16:54 THE WITNESS: James Steen.

11:16:55 THE CLERK: Spell your last name.

11:16:57 THE WITNESS: S-T-E-E-N.

11:16:59 THE CLERK: Have a seat please.

11:17:00 THE COURT: Mr. Steen, before we go any
11:17:01 further, I'm going to ask whether or not you consent to
11:17:03 having your testimony video and audio taped.

11:17:07 THE WITNESS: I don't see why not.

11:17:08 THE COURT: Is that an acceptance of the --

11:17:10 THE WITNESS: Yes, that's fine.

11:17:11 THE COURT: Thank you.

DIRECT EXAMINATION

11:17:14 BY MS. BIANCO:

11:17:14 **Q.** Good morning, Mr. Steen.

11:17:16 **A.** Good morning.

11:17:16 **Q.** Do you also go by the nickname Thumper?

11:17:19 **A.** Yes.

11:17:20 **Q.** And you're currently serving a life sentence right
11:17:22 now, is that correct?

11:17:23 **A.** Yes, ma'am.

11:17:24 **Q.** And you were convicted of murder in the first degree
11:17:27 for killing your wife, Vickie Steen, is that right?

11:17:30 **A.** Yes, ma'am.

11:17:31 **Q.** You shot her in the chest with a shotgun, correct?

11:17:34 **A.** Yes, ma'am.

11:17:35 **Q.** You were also convicted of murder in the second
11:17:38 degree for killing your cousin, Chuck Carr, Jr., is that
11:17:42 right?

11:17:42 **A.** Yes.

11:17:43 **Q.** And you shot him in the back of the head, is that
11:17:46 right?

11:17:46 **A.** That's where, yeah, he was shot, yeah.

11:17:49 **Q.** And these crimes that you were convicted of occurred
11:17:52 on September twelfth, 2010, is that right?

11:17:55 **A.** Yes, ma'am.

11:17:56 **Q.** Before going to prison, you lived in Oswego County,
11:17:59 correct?

11:17:59 **A.** Yep, ten months.

11:18:01 **Q.** Pardon? For ten months?

11:18:04 **A.** In the jail? Is that what you're talking about?

11:18:05 **Q.** No. Before going to prison, you actually -- before
11:18:08 going to jail, you actually lived in Oswego County.

11:18:11 **A.** Yes, ma'am.

11:18:11 **Q.** And you lived there your entire life?

11:18:14 **A.** Yes, ma'am.

11:18:15 **Q.** And you had worked at Roth Steel before you were
11:18:19 arrested for your wife's murder, correct?
11:18:21 **A.** Yes, ma'am.
11:18:22 **Q.** And you were also doing some work buying and
11:18:26 scrapping vehicles for a number of years, is that right?
11:18:28 **A.** For -- no, I started scrapping for myself when I
11:18:32 went to work for Roth Steel. That's when I first made my
11:18:35 own -- got my own tow truck made and I had -- I built two
11:18:38 myself out of pickup trucks and then I bought the
11:18:42 International and then I had two Ford rollbacks.
11:18:45 **Q.** Yes or no, did you do some scrapping --
11:18:48 **A.** Before I went to Roth Steel, no.
11:18:51 **Q.** -- in 1994.
11:18:52 **A.** No.
11:18:52 **Q.** Never did any kind of scrapping work.
11:18:54 **A.** I worked for Phil White. He hauled scrap cars for
11:18:58 Murtaugh, but that's all, I just drove truck, I wasn't
11:19:02 scrapping.
11:19:02 **Q.** So you drove truck and for this other person and
11:19:05 scrapped vehicles at Murtaugh's, is that your testimony?
11:19:07 **A.** I did not scrap vehicles, no, I did not scrap cars.
11:19:10 **Q.** Okay.
11:19:11 **A.** Or any kind of scrap back then. I just hauled for
11:19:15 them to wherever it got hauled.
11:19:18 **Q.** Yes or no, have you ever been to Murtaugh's scrap

11:19:22 yard in 1994?

11:19:23 **A.** Yeah.

11:19:24 **Q.** Okay.

11:19:25 **A.** I used to hall their scrap.

11:19:26 **Q.** In 1994 you hauled Murtaugh's scrap.

11:19:29 **A.** As far as I can remember, I don't know if it was
11:19:31 after ninety-four or -- I know I worked for them in the
11:19:35 nineties, how's that?

11:19:36 **Q.** Fair enough. I want to talk to you about some of
11:19:39 your associates in 1994. You knew who Heidi Allen was, is
11:19:45 that correct?

11:19:45 **A.** I knew who she was but I didn't know Heidi.

11:19:48 **Q.** Well, you knew she worked at the D&W, is that right?

11:19:51 **A.** No, I did not.

11:19:52 **Q.** Okay, you had been at the D&W prior to Heidi Allen's
11:19:57 abduction, correct?

11:19:57 **A.** Never.

11:19:58 **Q.** Pardon?

11:19:58 **A.** Never.

11:19:59 **Q.** You had never ever been to --

11:20:01 **A.** Been to the D&W at all.

11:20:03 **Q.** Never?

11:20:03 **A.** Till after all that happened.

11:20:06 **Q.** I'm sorry, you went after but not before?

11:20:07 **A.** Never was there before Heidi Allen abduction was

11:20:11 there, I never was over there.

11:20:12 **Q.** Okay.

11:20:13 **A.** Maybe I was when I was hauling. No, it was after
11:20:15 Heidi too because I was hauling logs for Jeff Prentiss and
11:20:20 we were taking them to Duell (ph) Sawmill, and Duell's
11:20:23 owned it, and that's where they bought me lunch.

11:20:25 **Q.** So prior to 1990 -- prior to Heidi's abduction, is
11:20:29 it your testimony that you had never been in the D&W
11:20:32 Convenience Store?

11:20:33 **A.** Not that I know of.

11:20:36 **Q.** Well, you knew Heidi Allen's boyfriend, Brett Law,
11:20:40 is that correct?

11:20:40 **A.** We went to school.

11:20:42 **Q.** And did you know that Heidi Allen was a confidential
11:20:45 informant for the police?

11:20:46 **A.** No clue.

11:20:47 **Q.** Did you tell some of your friends that she was a
11:20:52 rat?

11:20:53 **A.** Not that I know of.

11:20:55 **Q.** You saying not that I know of. Are you saying you
11:20:58 don't remember or you never said it?

11:21:00 **A.** Far as I know I never said it.

11:21:03 **Q.** You were friends with a person named Rich Murtaugh
11:21:06 in 1994, correct?

11:21:08 **A.** Yeah.

11:21:08 **Q.** And you remained friends with him up and until the time of your arrest for your wife's murder, correct?

11:21:14 **A.** No, we've -- we weren't really -- I wouldn't call it that, I worked -- I worked for Phil White that worked for Rich Murtaugh, that's how where that landed.

11:21:22 **Q.** And you had Rich Murtaugh's phone number in your phone at the time of your wife's murder, correct, programmed in your phone?

11:21:31 **A.** I don't know if it was or not. Had a lot of numbers in there. Murtaugh's Recycling might have been in there because that's when I was scrapping. The only reason Murtaugh's recycling would have been in there for price checks. You call all the scrap yards, find out who's paying what, so I had a lot of numbers in my phone.

11:21:49 **Q.** So you had called Murtaugh's scrap yard a number of times, would that be fair to say?

11:21:53 **A.** Yeah, you can say that, yeah, price checking.

11:21:55 **Q.** And Rich Murtaugh's family owned that junkyard, correct?

11:22:01 **A.** As far as I know, yeah.

11:22:02 **Q.** And you knew that the Murtaughs had a contract with a scrap yard in Canada, is that right?

11:22:11 MR. OAKES: Objection. Your Honor. Mr. Steen is the defense witness.

11:22:17 THE COURT: You're asking an awful lot of

11:22:19 leading questions. You haven't asked him to be
11:22:21 qualified as hostile.

11:22:23 MS. BIANCO: Well, Judge --

11:22:24 THE COURT: Hold on. He hasn't done anything
11:22:25 at this point regarding your questions that would allow
11:22:27 me to establish him as hostile. I'll sustain the
11:22:30 objection.

11:22:30 MR. OAKES: Thank you.

11:22:31 **Q.** Mr. Murtaugh, what was your knowledge about a -- the
11:22:37 Murtaughs hauling scrap, that junkyard hauling scrap to
11:22:43 Canada?

11:22:43 **A.** I'm Mr. Steen, not Mr. Murtaugh.

11:22:45 **Q.** I'm sorry.

11:22:46 **A.** And all is I did was took the scrap where I was told
11:22:50 to take it. We took it to Canada, we took it to Erie, we
11:22:52 took it to Rochester. Wherever I was told to take a load,
11:22:54 that's where I drove, and that's where the load went. I
11:22:57 didn't know where they were going until they told me where
11:22:59 they were going or where I was going to pick it up. We
11:23:02 picked up loads all over the state. Wherever they'd be
11:23:06 scrapping out yards, that's where we'd go. I was up in
11:23:09 Watertown, I was all over the place.

11:23:10 **Q.** So you had -- were you very familiar with the
11:23:13 scrapping procedure at Murtaugh's?

11:23:15 **A.** No. I just got told where to go.

11:23:17 **Q.** And you went?

11:23:18 **A.** I was a truck driver, I wasn't a scrapper, I wasn't -- I drove truck for them. They said take that truck to this yard, take it here, take it there. Usually Phil White was telling me, not the Murtaughs. Phil worked for them, I worked for Phil.

11:23:32 **Q.** Were you a user of marijuana in 1994?

11:23:38 **A.** Oh, yes. I smoked marijuana for a long time.

11:23:43 **Q.** Did you smoke marijuana with a Richard Murtaugh?

11:23:48 **A.** Oh, probably.

11:23:49 **Q.** Did you do cocaine with a Richard Murtaugh?

11:23:54 **A.** No, ma'am.

11:23:54 THE COURT: Time frame for both questions.

11:23:56 **Q.** 1994.

11:23:58 **A.** Yes for the marijuana, no for the cocaine.

11:24:02 **Q.** In the nineteen-nineties, were you using LSD?

11:24:07 **A.** No, ma'am.

11:24:08 MR. OAKES: Objection, Your Honor. Again, with the leading, trying to give some latitude but --

11:24:14 MS. BIANCO: Your Honor, we --

11:24:15 THE COURT: Continues to be leading, and I'm wondering where you're going with it to be honest with you.

11:24:19 MS. BIANCO: Well, Your Honor, we are accusing him of murdering this particular person.

11:24:22 THE COURT: No, you're not, you're assuming. 11:24:24 That's your position, okay. You have not asked for him 11:24:29 to be treated as hostile. Your questions have been all 11:24:32 leading to this point. He is your called witness. You 11:24:34 know, I know, there are certain rules regarding leading 11:24:37 questions when he is your witness, where a person is 11:24:40 your witness. Ask the appropriate form of question 11:24:43 please, okay?

11:24:44 **Q.** What drugs were you using in the nineteen-nineties 11:24:48 please?

11:24:48 **A.** Marijuana.

11:24:50 **Q.** Was that all?

11:24:51 **A.** In the early nineties, yes. It was late nineties 11:24:54 like ninety-eight, ninety-nine, two-thousand is when I 11:24:58 started using cocaine.

11:25:00 **Q.** In the early nineteen-nineties, did you deal in any 11:25:08 drugs?

11:25:09 MR. OAKES: Objection.

11:25:10 **A.** Just I sold a little weed here and there, but other 11:25:13 than that that's --

11:25:14 THE COURT: I'll allow it. Ms. Bianco, start 11:25:17 asking non-leading questions please.

11:25:18 THE WITNESS: Am I supposed to wait?

11:25:20 THE COURT: Hold on. All these questions are 11:25:21 very accusatory. He is your witness. You are bound by

11:25:24 the rules of evidence regarding your methodology of questions. You agree with me.

11:25:28 MS. BIANCO: Your Honor, I'd ask that he be declared hostile.

11:25:31 THE COURT: He's done nothing to this point that I can declare him hostile.

11:25:35 **Q.** In 1994, could you tell us whether or not you were friends with a person named Roger Breckenridge?

11:25:46 MR. OAKES: Objection again, Your Honor.

11:25:48 MS. BIANCO: I don't know how to ask it in a non-leading way unless you want me to ask who his friends are.

11:25:53 MR. OAKES: What was your relationship to Roger Breckenridge.

11:25:55 THE COURT: I'll allow it, it's a foundational question. Any question beyond it has to be in the proper form. You can answer the question.

11:26:01 **A.** Yeah. I knew Roger from school.

11:26:03 **Q.** What was your relationship with Roger Breckenridge?

11:26:06 **A.** Acquaintances. I wouldn't call him a friend, but I wouldn't call him an enemy.

11:26:10 **Q.** How often would you speak to Roger Breckenridge in 1994?

11:26:15 **A.** If I ran into him we'd say what's up. Other than that, it wasn't like we were going out of our way to look

11:26:21 for each other.

11:26:22 **Q.** What if any drugs did you do with Roger Breckenridge?

11:26:24 **A.** Like I said, I smoked weed back then. I smoked weed with a lot of people.

11:26:28 **Q.** What about Roger Breckenridge?

11:26:30 **A.** Like I said, I smoked weed with a lot of people.

11:26:32 **Q.** Did you --

11:26:33 **A.** Yeah, I couldn't tell you everybody I smoked weed with, but yeah, I -- I used to get high with a lot of people. Smoking weed was a regular thing back then. Everybody smoked weed.

11:26:44 **Q.** What about Roger Breckenridge? Did you smoke weed with --

11:26:48 **A.** Yes.

11:26:48 **Q.** Are you familiar where Roger Breckenridge lived in 1994?

11:26:55 **A.** No.

11:26:56 **Q.** Did you know where his mother lived in 1994?

11:27:01 **A.** Exactly, no. I didn't know until later. I knew she lived over in Texas at one time. She lived everywhere so I didn't know.

11:27:11 THE COURT: Before you ask the next question, I'm assuming you mean Texas, New York.

11:27:14 THE WITNESS: Yes, that's -- we're talking

11:27:15 about New York.

11:27:16 THE COURT: Thank you.

11:27:18 **Q.** Have you ever been to Ms. -- Roger Breckenridge's
11:27:24 mother's home?

11:27:26 **A.** I was over to his mother's one time when she lived
11:27:28 in Texas.

11:27:30 **Q.** Texas, New York?

11:27:31 **A.** Little Texas I should say, yeah, Texas, New York.
11:27:40 And the only reason I was at her house is her house was
11:27:42 next to the bar and I was at the bar and I walked over to
11:27:45 her house and I seen her there.

11:27:46 THE COURT: Mr. Steen, no question before you
11:27:50 right now, okay?

11:27:51 **Q.** Did you ever have a conversation with Roger
11:28:01 Breckenridge regarding Heidi Allen's whereabouts?

11:28:07 MR. OAKES: Objection.

11:28:09 THE COURT: I'm going to sustain it.

11:28:11 MS. BIANCO: Judge, that's foundational.

11:28:15 THE COURT: No, it goes right to the heart of
11:28:17 the case, it's not foundational, it's well beyond
11:28:20 foundation.

11:28:24 **Q.** Have you had any conversations about Heidi Allen
11:28:32 with anyone?

11:28:34 MR. OAKES: Same objection.

11:28:35 THE COURT: That's more foundational. I'll

11:28:37 allow that.

11:28:38 **A.** Can you explain that please? I don't understand
11:28:41 what you're saying.

11:28:42 **Q.** Have you had any conversations about Heidi Allen's
11:28:46 disappearance?

11:28:47 THE COURT: Before you answer that question,
11:28:49 can we have a time frame please? Are you talking 1994
11:28:53 or 2013?

11:28:54 MS. BIANCO: Well, I'd like to direct his
11:28:56 attention to 1994 through -- I'm looking at the
11:29:00 prosecutor's statement, the recent letter he gave me
11:29:02 regarding his admissions.

11:29:04 THE COURT: Okay.

11:29:06 MS. BIANCO: And I don't know when those were.
11:29:07 That's why I'm trying to inquire, Judge.

11:29:09 THE COURT: Mr. Oakes, wasn't that statement
11:29:11 given in December of 2014?

11:29:12 MR. OAKES: Your Honor, I guess I have a
11:29:14 question for foundation. Is Ms. Bianco referring to
11:29:18 the statement given to law enforcement or is she
11:29:20 referring to the letter I've recently disclosed to the
11:29:22 Court regarding the admissions at the state
11:29:25 correctional facility?

11:29:26 THE COURT: I'm assuming you want the state
11:29:27 correctional in December of 2014.

11:29:30 MS. BIANCO: That's the one, Your Honor.

11:29:32 MR. OAKES: I believe that's December twenty-ninth of 2014, Your Honor.

11:29:35 THE COURT: So Ms. Bianco, you might want to -- if you want an open ended, you can do twenty-two years of whether or not he's ever spoken. If you want to talk about specific --

11:29:42 MS. BIANCO: I'll start with this one.

11:29:43 THE COURT: Thank you.

11:29:43 **Q.** On December twenty-ninth, 2014, did you have a meeting with the two prosecutors here and members of the Sheriff's Department while you were in custody?

11:29:56 **A.** Yes, ma'am.

11:29:58 **Q.** Okay, and Mr. -- Investigator Pietroski was one of those investigators?

11:30:06 **A.** I forget who was there but --

11:30:08 MR. MILES: Judge, I apologize. Can we approach?

11:30:10 THE COURT: Sure. Mr. Miles is representing Mr. Steen. Hold on just a second please.

11:30:47 (Whereupon, there was an off the record discussion at the bench.)

11:31:52 THE COURT: Do you have a copy, Mr. Oakes?

11:31:53 MR. OAKES: Yes, Your Honor.

11:31:54 THE COURT: Mr. Miles, I'm going to have Mr.

11:31:55 Steen and you go in the other room to speak. Officer,
11:32:05 would you mind taking Mr. Steen back in the other room?
11:32:09 Thank you, sir. Mr. Oakes, Ms. Peebles, five-minute
11:32:22 recess?

11:32:23 MS. PEEBLES: Sure.

11:32:24 THE COURT: Five minutes, folks, while Mr.
11:32:26 Miles can talk to his client.

11:37:16 (Whereupon, there was a recess.)

11:38:07 THE COURT: Can we have Mr. Steen again
11:38:08 please? Mr. Steen, consider the fact that you're still
11:38:44 under oath, okay?

11:38:46 THE WITNESS: Yes, sir.

11:38:47 THE COURT: Thank you. Ms. Bianco, when we
11:38:48 left, you had made reference to December twenty-ninth
11:38:51 statement that Mr. Steen allegedly gave to Mr. Oakes,
11:38:55 Mr. Moody and two investigators, is that correct?

11:38:58 MS. BIANCO: That is correct, Your Honor.

11:38:59 THE COURT: Are you going to resume that line
11:39:00 of questioning?

11:39:01 MS. BIANCO: No mike.

11:39:05 THE COURT: Try now.

11:39:07 MS. BIANCO: Yes. Thank you.

11:39:08 **Q.** Mr. Steen, you were talking about a meeting that you
11:39:13 had on December twenty-ninth, 2014.

11:39:16 **A.** Yes.

11:39:16 **Q.** Do you remember that question?
11:39:17 **A.** Yep.
11:39:18 **Q.** Okay, what did you tell the prosecutors and the two
11:39:23 investigators about Breckenridge's or the possibility of
11:39:30 Breckenridge's involvement with the disappearance of Heidi
11:39:33 Allen? What did you tell them?
11:39:35 **A.** Well, what was said that day is that I was driving,
11:39:37 that I worked driving hauling cars for Murtaugh's and that
11:39:41 I hauled a load, got back, and it was like two weeks later,
11:39:46 a week later, Roger came up to me and said something about
11:39:49 me hauling a stollen vehicle, a van, and I said okay. I
11:39:54 went and asked Rich Murtaugh if that happened. He said no.
11:39:58 That was that. Then we discussed farther that it was like
11:40:02 eight months after that, we were at a party and Roger
11:40:07 showed up, he was drunk, and he had mentioned something
11:40:09 about do you know what was in that van, and I said no, I
11:40:13 have no idea what was in that van, and he went on the part
11:40:16 about the remains of Heidi Allen. I went and asked Rich
11:40:19 Murtaugh the same question and he told me no, it wasn't.
11:40:23 So that's all that I've known about what Roger told me.
11:40:28 **Q.** And I want to direct your attention to this -- the
11:40:31 van. You said it was a van that you hauled?
11:40:33 **A.** Yep.
11:40:34 **Q.** Was that in 1994?
11:40:36 **A.** I didn't start working for Murtaugh's until I think

11:40:40 after that. I was working for Roger Allen driving dump truck when Heidi was abducted, and Heidi was abducted in ninety-four if I was correct. I've been trying to put this all together because it's twenty years ago, and I didn't go to work for Murtaugh's until after that because I can remember working at Roger Allen's, like I told the DA and the two sheriffs, that I can remember working for Roger Allen, standing out on Allen Enterprise Ave. and talking to guys I drove with and asking them was Heidi related to Roger because Roger Allen, Heidi Allen, and they all said no and --

11:41:22 **Q.** When you spoke to the prosecutors on December twenty-ninth about what Mr. Breckenridge said to you, did you clarify that this was not 1994?

11:41:36 **A.** We were never asked if it was ninety-four.

11:41:41 **Q.** Your conversation with Roger Breckenridge about the van, precisely when was that?

11:41:49 **A.** Oh, God. Whenever I was working for Murtaugh's. That would -- I -- I was going to have to -- I tried figuring this out back then. I know I worked for -- driving dump truck in ninety-four, and then I went to work for Murtaugh's after that, I don't know if I went to work for Murtaugh's in the summer of ninety-four or the end of ninety-four or the spring of ninety-five. It was in that time span that -- when I went to work for them, and then

11:42:27 that's when Roger was working at Murtaugh's and I was driving truck so that's how I seen him most of the time because he was working there.

11:42:34 **Q.** You said that there were two conversations with Mr. Breckenridge about this, is that right?

11:42:41 **A.** The first one was him telling me I hauled a stollen vehicle.

11:42:45 **Q.** And the second one was where? Where was that conversation and when was that?

11:42:48 **A.** Oh, at a party. I can't remember if it was on the power lines or -- it's where everybody would go and there would be a party and keg, you'd be drinking, it's a keg party. I don't know if it was Happy Valley back then or wherever we would be at.

11:43:03 **Q.** When was that conversation?

11:43:07 **A.** Oh, God, ninety-five, ninety -- late ninety-four, early ninety-five, middle of ninety-five. I don't know exactly, you know what I mean? I don't -- if I could remember when I was working and where I was working, how, when, that is when I could be more -- but I can't, I don't -- sorry.

11:43:23 **Q.** Did you tell the prosecutors that Roger Breckenridge made a number of comments about Heidi Allen's disappearance?

11:43:33 **A.** I can remember hearing it over at Wescott's house a

11:43:37 couple of times, but other than that, everybody thought
11:43:40 Roger was just blowing steam, that's all he ever did.
11:43:43 **Q.** What did Roger say at Wescott's house and when about
11:43:47 Heidi Allen's disappearance?
11:43:48 **A.** I -- both -- I -- what exactly was ever said I
11:43:50 couldn't -- you don't listen to Roger. Roger starts piping
11:43:55 off, he's a -- how do I say this without getting in trouble
11:43:57 up here? A lot of hot air. You know what I'm saying?
11:44:01 He -- you never knew if he was telling you the truth. Why
11:44:04 do you think I went to Rich Murtaugh when he told me I
11:44:08 hauled a stollen vehicle. That's when I was trucking to
11:44:09 Canada with a stollen vehicle? I didn't want to go to
11:44:12 jail, I didn't want to go to jail back then, that's why I
11:44:13 went back to Rich Murtaugh and asked did I haul a stollen
11:44:17 vehicle and he told me no.
11:44:18 **Q.** How many different times did Roger Breckenridge
11:44:22 bring up the subject of Heidi Allen's disappearance with
11:44:26 you?
11:44:26 **A.** Oh, I know those two times, it could have been more
11:44:29 that I had heard it or whatever, I -- I never kept count.
11:44:32 **Q.** I want to direct your attention to the comments you
11:44:35 said were made at Wescott's house. Whose house is that?
11:44:38 **A.** It was Paul Wescott's, Jennifer Wescott's
11:44:42 father's.
11:44:43 **Q.** And who was present when those comments were made?

11:44:46 **A.** Oh, I -- that was a long time ago. I don't know who
11:44:49 was all there. It could have been her mother, the girls
11:44:53 were probably there.
11:44:54 **Q.** The girls. Who would the girls be?
11:44:56 **A.** Jennifer, Missy, Jen.
11:44:59 **Q.** Jen who?
11:45:00 **A.** Wescott.
11:45:01 **Q.** Okay.
11:45:02 **A.** The Wescott girls.
11:45:03 **Q.** Missy who?
11:45:04 **A.** Wescott.
11:45:05 **Q.** Okay.
11:45:05 **A.** Jessica Wescott.
11:45:07 **Q.** Anyone else?
11:45:08 **A.** I don't know who'd all have been there. I don't --
11:45:11 **Q.** Amanda Braley perhaps?
11:45:13 **A.** Amanda could have been there. She was there
11:45:15 different times, yeah, she was going out with Jen Lumley
11:45:18 (ph). Jen Lumley could have been there. I don't know if
11:45:21 they were and she said that I was there or not. I read
11:45:23 that in the paper too. I don't know if I was there that
11:45:25 day when he said that and Amanda was there. You could stop
11:45:29 in there and somebody'd be there and somebody wouldn't be,
11:45:32 you know what I mean, you don't know when -- the only
11:45:34 reason Amanda would have been there if Jennifer would have

11:45:36 been there.
11:45:37 **Q.** How many times at this Wescott residence did
11:45:42 Breckenridge bring up this subject approximately?
11:45:46 **A.** I don't know. A couple times.
11:45:47 **Q.** Okay, what do you remember Roger Breckenridge saying
11:45:52 at the Wescott residence about the disappearance of Heidi
11:45:57 Allen?
11:45:57 **A.** Oh, that, I -- just about her being disappeared and
11:46:01 that would be about it. I don't know exactly, ma'am. I
11:46:05 couldn't tell you exactly what he said because I never --
11:46:07 like I just told you before, Roger Breckenridge is nothing
11:46:11 but a talker, big mouth. He runs his mouth all the time
11:46:14 looking for -- looking for attention. He's an attention
11:46:18 getter, that's how he got attention, okay, plain and
11:46:21 simple. That's why he would tell somebody like he told me
11:46:24 I hauled to get my reaction. Now he had my attention. And
11:46:29 I went and clarified that hopefully immediately, found out
11:46:33 if I was hauling a hot vehicle.
11:46:36 **Q.** What did you tell the prosecutors on December
11:46:39 twenty-ninth, 2004 about where you were told to take the
11:46:44 shipment in Canada?
11:46:46 MR. OAKES: Objection.
11:46:47 **Q.** What were you told?
11:46:48 MR. OAKES: I believe counsel may have
11:46:49 misspoke and said 2004 rather than 2014.

11:46:52 MS. BIANCO: 2014, I apologize.

11:46:54 MR. OAKES: I just want to be clear for the record.

11:46:56 THE COURT: Could you please ask the question with a proper date.

11:46:59 MS. BIANCO: Certainly, Judge.

11:47:00 **Q.** In 2014, during your interview with the prosecutors and the two sheriffs, what did you tell them regarding the shipment taken to the facility? In other words, was a shipment taken directly to the shedder, the shredder, did you say?

11:47:17 **A.** All shipments are taken directly to the shredder. Some are stacked up out in the backyard, some are taken right there and ran right through. I ran a step deck trailer, so yeah, I backed up to the shredder and the crane unloaded me.

11:47:29 **Q.** Did you tell them you were told to take the shipment that Breckenridge was talking about --

11:47:35 **A.** I drove the step deck trailer, that's where I went. I said if they would have -- like I told them that day, if they would have put that van on my trailer, and Heidi would have been in that van, that's where it would have went. Right to the shredder. Plain and simple. That's what I told them.

11:47:50 **Q.** Did you tell them, the prosecutors, that you were

11:47:55 told to take the shipment directly --
11:47:57 **A.** No.
11:47:57 **Q.** -- to the shredder?
11:47:59 **A.** No, no.
11:48:01 **Q.** When Roger made these comments to you about Heidi
11:48:16 Allen, you can think of at this point four different times
11:48:21 that this may have come up?
11:48:22 **A.** It probably was more, but you heard these comments
11:48:24 out of a lot of people. Everybody knew what happened to
11:48:27 Heidi back then. Everybody was talking like they knew what
11:48:30 happened to her but nobody knew anything.
11:48:32 **Q.** Was Roger talking about he knew what happened, like
11:48:35 he knew what happened to her?
11:48:37 **A.** Four, five, like I said, five, whenever, yeah.
11:48:41 **Q.** Okay, what did Roger say about what he knew happened
11:48:45 to her?
11:48:45 **A.** Ma'am, that was twenty years ago. I can -- didn't
11:48:50 you just ask me was I smoking weed back then? Oh, my God.
11:48:54 THE COURT: Mr. Steen, you don't get to ask
11:48:56 the questions, okay?
11:48:57 MS. BIANCO: Your Honor, I'd like to declare
11:48:58 the witness hostile at this time.
11:48:59 THE COURT: Not yet. Nice try.
11:49:04 **A.** It was twenty years ago. I can't remember exactly
11:49:07 what was --

11:49:07 THE COURT: Mr. Steen, there is not a question
11:49:08 presented to you. Ms. Bianco, your witness.
11:49:11 MS. BIANCO: Certainly.
11:49:12 **Q.** Was Roger someone you considered a friend?
11:49:17 **A.** No. More of an acquaintance than a friend.
11:49:21 **Q.** Would Roger's number have been in your phone contact
11:49:25 list in 2010?
11:49:28 **A.** I don't think so. Jen's would have been.
11:49:32 MS. BIANCO: May I have a moment, Your Honor?
11:49:39 THE COURT: Sure.
11:49:40 (Whereupon, there was a pause in the
11:49:51 proceeding.)
11:49:51 MS. BIANCO: May I approach the witness, Your
11:50:09 Honor?
11:50:09 THE COURT: Absolutely.
11:50:10 **Q.** I'm showing the witness what's been marked as
11:50:12 Defendant's Exhibit 45 which has been stipulated into
11:50:16 evidence. I'd like you to look at the top of page twenty-
11:50:20 four of your phone records.
11:50:22 THE COURT: You said exhibit -- Exhibit 45,
11:50:24 Ms. Bianco?
11:50:25 MS. BIANCO: Forty-five, yes, Your Honor.
11:50:26 THE COURT: Thank you. Exhibit 45 moved in
11:50:29 based on stipulation.
11:50:32 (Defendant's Exhibit No. 45 was received in

11:50:36 evidence).

THE COURT: What page?

11:50:37 MS. BIANCO: That would be page twenty-three.

11:50:37 **Q.** Would that be Roger Breckenridge's phone number?

11:50:39 **A.** I don't know. It says Roger H. It doesn't say
11:50:42 Roger Breckenridge. I have no idea.

11:50:59 **Q.** Now what you told the prosecutors in -- on December
11:51:04 twenty-ninth, 2014, that wasn't the first time you were
11:51:10 interviewed about this case was it?

11:51:12 **A.** Nope.

11:51:13 **Q.** Okay, were you interviewed by an Investigator
11:51:18 Pietroski on June fourteenth, 2013?

11:51:21 **A.** Yes, ma'am.

11:51:21 **Q.** And what did you tell -- and you gave him a sworn
11:51:25 statement?

11:51:25 **A.** Sworn statement said I had nothing to do with Heidi
11:51:28 Allen's disappearance.

11:51:28 **Q.** Did you tell Investigator Pietroski or what did you
11:51:32 tell Investigator Pietroski about the things that Roger
11:51:36 Breckenridge said?

11:51:38 **A.** Back then?

11:51:39 **Q.** Back then.

11:51:41 THE COURT: Stop.

11:51:42 **A.** I don't believe I said anything.

11:51:43 THE COURT: No, stop. You mean back then in

11:51:46 terms of 1994 or back then in terms of 2013?

11:51:49 MS. BIANCO: June fourteenth, 2013 when he had
11:51:51 a -- when he spoke with Investigator Pietroski.

11:51:54 **Q.** What did you tell him regarding Roger Breckenridge?

11:51:59 **A.** Nothing I believe.

11:52:00 **Q.** Nothing?

11:52:00 **A.** I don't -- I can't remember. That was a year and a
11:52:03 half, two years ago.

11:52:04 **Q.** Would there be anything to refresh your recollection
11:52:06 like your sworn statement?

11:52:07 **A.** Show me the statement, yeah, and I'll, yeah, if I
11:52:10 signed it, I'm sure I said it.

11:52:20 MS. BIANCO: Ninety-four.

11:53:01 **Q.** Showing you what's been marked Exhibit 94.

11:53:06 THE COURT: That's Exhibit 94?

11:53:08 MS. BIANCO: Yes.

11:53:09 THE COURT: Thank you.

11:53:10 **Q.** Do you recognize this?

11:53:15 (Whereupon, there was a pause in the
11:53:17 proceeding.)

11:53:17 **A.** Yes, ma'am, I do. I told you that's what I said.

11:53:20 **Q.** There is nothing in that statement about what Roger
11:53:25 Breckenridge told you, correct?

11:53:26 **A.** This says, "I know nothing about anything that
11:53:28 happened to Heidi Allen," is what this statement said.

11:53:32 **Q.** And you were also interviewed on March fifteenth,
11:53:35 2013 by Investigator Pietroski, is that right?

11:53:39 **A.** Yes, ma'am.

11:53:40 **Q.** And did you tell Investigator Pietroski at that
11:53:44 time --

11:53:44 MR. OAKES: Objection, Your Honor.

11:53:45 THE COURT: Based on?

11:53:45 MR. OAKES: Impeaching her own witness.

11:53:48 THE COURT: I'm not sure if that's what she's
11:53:50 doing yet. Are you looking at another exhibit?

11:53:52 MS. BIANCO: I'm looking at another exhibit to
11:53:55 see if he remembers what he said.

11:53:57 THE COURT: What's the number of that exhibit?

11:53:59 MS. PEEBLES: That's not the correct number.
11:54:00 May we approach?

11:54:01 THE COURT: Sure.

11:54:02 (Whereupon, there was an off the record
11:55:02 discussion at the bench.)

11:55:02 THE COURT: No objection by the People, right,
11:55:03 Mr. Oakes?

11:55:03 MR. OAKES: No.

11:55:05 THE COURT: Okay.

11:55:30 (Defendant's Exhibit No. 44 was marked for
11:55:32 identification).

11:55:34 THE COURT: Ms. Bianco, for clarification

11:55:35 purposes, Exhibit 94 from the defense is a statement
11:55:37 given June thirteen by Mr. Steen, correct?
11:55:39 MS. BIANCO: That's correct, Your Honor.
11:55:41 THE COURT: And what has now been marked as
11:55:42 Exhibit 44 is a statement given by Mr. Steen in March
11:55:45 of 2013, correct?
11:55:46 MS. BIANCO: Yes, Your Honor. I think our
11:55:48 mikes are all off again.
11:55:49 THE COURT: I told you my technical problems.
11:55:54 **Q.** Mr. Steen, you spoke with the police on June
11:55:58 fifteenth of 2013?
11:55:59 **A.** Yes, ma'am.
11:56:00 **Q.** During that time, did you mention anything about
11:56:04 what Roger Breckenridge said to you in regards to Heidi
11:56:08 Allen?
11:56:08 **A.** I don't believe so. Maybe I did. You got the
11:56:11 statement there. I can't remember what I said, so once we
11:56:14 find out, I'll know if I did or didn't.
11:56:15 MS. BIANCO: Okay, may I approach, Your Honor?
11:56:17 THE COURT: Yes.
11:56:18 **Q.** Showing you Defendant's Exhibit 44, could you review
11:56:22 that?
11:56:23 THE COURT: Okay, hold on. Because you asked
11:56:25 about the June statement. That's Exhibit 94. Are you
11:56:28 now using a March exhibit to refresh his recollection

11:56:31 regarding June?

11:56:33 MS. BIANCO: No. He already answered that question, Your Honor.

11:56:35 THE COURT: You just asked from that podium in June, in the interview of June of 2013, did you make any statements against -- about Roger Breckenridge. I was waiting for an asked and answered objection, there wasn't one, and now you're presenting a different document. Are you asking him about the March thirteen statement?

11:56:52 MS. BIANCO: I am about that right now, Your Honor.

11:56:54 THE COURT: I want to clarify.

11:56:55 MS. BIANCO: Yes.

11:56:56 THE COURT: Okay.

11:57:00 **A.** Yep.

11:57:02 **Q.** Have you had an opportunity to read that?

11:57:04 **A.** Yes, ma'am.

11:57:05 **Q.** Did you say anything to Investigator Pietroski?

11:57:13 **A.** No, ma'am.

11:57:14 **Q.** Okay. So you -- you had given these two sworn statements.

11:57:19 MS. BIANCO: I would offer Defendant's 44 and Defendant's 94 into evidence.

11:57:24 THE COURT: No objection from the People?

11:57:26 MR. OAKES: Correct. We said that, yes.

11:57:28 THE COURT: Ninety-four and forty-four are in.

(Defendant's Exhibit No. 44 was received in evidence).

(Defendant's Exhibit No. 94 was received in evidence). 11:57:33

11:57:33 **Q.** When you gave the information about Roger Breckenridge on December twenty-ninth, 2014, were you asked to give a sworn statement? 11:57:34 11:57:41

11:57:42 **A.** No, ma'am.

11:57:43 **Q.** And this was the first time you mentioned Roger Breckenridge out of the three interviews, correct? 11:57:53

11:57:56 **A.** Yes, ma'am.

11:57:57 **Q.** Before that, you denied knowing anything about Heidi Allen's disappearance, correct? 11:58:05

11:58:08 **A.** Yes, ma'am.

11:58:09 **Q.** Going back to Roger Breckenridge, do you know who Roger was dating in 1994? 11:58:16

11:58:20 **A.** I believe he was married and he just started seeing Jennifer Wescott. 11:58:24

11:58:26 THE COURT: Let's stop right there. It's noon, we're going to recess for lunch. This seems to be another line you're going to pursue so this seems to be the best time to break. 11:58:27 11:58:31 11:58:34

MS. BIANCO: Sure.

11:58:36 THE COURT: Mr. Steen, you're going to break
11:58:38 for lunch for a half hour. You're going to be
11:58:41 considered under oath when you return.

11:58:43 THE WITNESS: Yes, sir.

11:58:43 THE COURT: Court's recessed until one
11:58:45 o'clock.

11:58:46 (Whereupon, there was a recess).

01:02:24 MR. MOODY: Judge, could we approach for a
01:02:27 second?

01:02:27 THE COURT: Sure.

01:02:28 (Whereupon, there was an off the record
01:03:50 discussion at the bench.)

01:03:50 THE COURT: Okay, would you please have Mr.
01:03:56 Steen come back in please?

(Whereupon, there was a pause in the
proceeding).

01:04:26 THE COURT: Mr. Steen, have a seat please,
01:04:27 sir.

01:04:28 THE WITNESS: Yes, sir.

01:04:29 THE COURT: We're back on the record with
01:04:33 regard to the 440 motion filed by Gary Thibodeau. On
01:04:36 the stand is Mr. Steen. Mr. Steen, consider that
01:04:38 you're still under oath, sir, okay?

01:04:39 THE WITNESS: Yes, sir.

01:04:40 THE COURT: Ms. Bianco, your witness.

01:04:43 MS. BIANCO: Thank you, Judge.

01:04:44 **Q.** Mr. Steen, did you receive a letter from the Office of the Federal Public Defender in April of 2014 requesting a meeting?

01:04:53 **A.** Yes.

01:04:54 **Q.** Okay, did you respond to that letter?

01:04:56 **A.** No, ma'am.

01:04:57 **Q.** Because you did not want to talk with anyone from the Office of the Federal Public Defender?

01:05:02 **A.** Yes, ma'am.

01:05:02 **Q.** Is that correct?

01:05:03 **A.** Yep.

01:05:03 MS. BIANCO: Your Honor, I'd ask that he be considered hostile at this point because he refused to talk with us in the past.

01:05:08 THE COURT: No, that's not how you qualify someone as hostile witness. He's answered all your questions here today.

01:05:15 **Q.** I'd like to go back to your police interview, your first police interview on March fifteenth, 2013 and ask what questions were you asked about Mr. Breckenridge on that day?

01:05:32 **A.** Oh, well, I don't recall.

01:05:37 **Q.** Were you asked any questions about Mr. Breckenridge on that day?

01:05:40 **A.** Not that I know of.

01:05:43 **Q.** Were you asked any questions about Mr. Michael Bohrer on that day?

01:05:49 **A.** I believe, yes, both of them 'cause I was asked if I knew them, yes, that's right, because they were telling me they were there because of Tonya Priest making the allegation that me, Michael Bohrer and Roger Breckenridge are the ones that did this.

01:06:05 **Q.** So you were asked about --

01:06:07 **A.** I was asked that question --

Q. About Roger --

01:06:09 **A.** If I knew them, yes.

01:06:11 **Q.** And what did you tell them your knowledge of Roger Breckenridge was at that time?

01:06:15 **A.** I told them I knew him.

01:06:16 **Q.** Did you tell them anything else about Roger Breckenridge at that time?

01:06:20 **A.** No, ma'am.

01:06:21 **Q.** What did you tell them about Michael Bohrer on March fifteenth?

01:06:26 **A.** Told them didn't know him.

01:06:28 **Q.** You did not know him?

01:06:29 **A.** Yes, ma'am.

01:06:30 **Q.** What did you tell them about Jennifer Westcott if anything?

01:06:34 **A.** Told them I knew her.
01:06:35 **Q.** What else did you say about her?
01:06:37 **A.** Roger's girlfriend I might have said. That's about
01:06:40 it.
01:06:40 **Q.** Did you mention anything about a conversation about
01:06:45 Heidi Allen, about Heidi Allen's disappearance with
01:06:50 Jennifer Wescott? Did you talk to the police about that?
01:06:53 **A.** Not that I recall.
01:06:55 **Q.** Were you asked where you were living on March
01:06:59 fifteenth, 2013? Let me strike that. Were you asked where
01:07:02 you were living in 1994 by the investigators on March
01:07:06 fifteenth, 2013?
01:07:08 **A.** I don't recall, but I don't -- I don't know. I
01:07:11 can't remember. I don't think they did.
01:07:12 **Q.** Where were you living in 1994?
01:07:15 **A.** I believe -- I believe it was 103 County Route 35.
01:07:19 **Q.** Okay, do you know for certain?
01:07:22 **A.** That's a toss -- how would -- I, you know, that was
01:07:25 twenty years ago, I don't know, I was here, there. I think
01:07:28 I was at my mom's house on County Route 35.
01:07:31 **Q.** Okay, what did you tell them about how you knew
01:07:35 Heidi Allen on March fifteenth, 2013?
01:07:39 **A.** I knew Heidi Allen as -- from school, I knew her,
01:07:44 didn't know her know her, I just knew her by sight, I knew
01:07:46 she was going out with -- jeeze, now I can't even remember

01:07:50 his name but you know who I'm talking about.

01:07:52 **Q.** Brett Law?

01:07:53 **A.** Yes, she was going out with Brett, and she got in a
01:07:56 fight out on the cliffs, at the cliffs at a party with
01:07:59 Diane Shelmadine (ph) and Diane was a friend of mine and I
01:08:02 remember that because that's who she got in a fight with
01:08:05 was Heidi.

01:08:05 **Q.** Were you present at the party?

01:08:06 **A.** Yeah.

01:08:07 **Q.** Have you ever had a discussion with Heidi?

01:08:09 **A.** Never.

01:08:10 **Q.** But you went to school with her?

01:08:12 **A.** She's younger than I am, but we all went to Mexico
01:08:16 High School.

01:08:16 **Q.** Earlier I asked you if you sold marijuana and you
01:08:25 said here and there. Who did you sell marijuana to?

01:08:28 **A.** A lot of people.

01:08:32 MR. OAKES: Objection, Your Honor. Foundation
01:08:34 as to time frame.

01:08:35 THE COURT: He answered that he did in the
01:08:37 past. I'll allow the question.

01:08:38 **Q.** In 1994, who did you sell marijuana to?

01:08:43 **A.** A lot of people. I don't know exactly. Back then
01:08:46 it was oh, jeeze, names are just -- just mostly friends.
01:08:51 I'd pick up -- probably Jeff Derby, Rodney.

01:08:58 **Q.** Rodney who?

01:08:59 **A.** I can't remember the guy's last name. These are people I know, you know what I mean, there's a lot of people you might know only one name. Steve, I don't know his last name, there's a Scott, I -- there's different people that -- there were just certain people that yeah, they needed a bag and I'd get it for them. It wasn't like I was a big dealer. I knew where to go get it and that's what happened.

01:09:20 **Q.** Would you say you sold more than twenty-five -- to more than twenty-five people?

01:09:25 **A.** No.

01:09:26 **Q.** Less than twenty-five?

01:09:27 **A.** Yes.

01:09:28 **Q.** Less than twenty?

01:09:29 **A.** Yeah.

01:09:30 **Q.** Less than ten?

01:09:32 **A.** Probably around ten.

01:09:33 **Q.** Okay, and where did you have these sales of marijuana? Where in 1994, where would you sell it?

01:09:42 **A.** Wherever. If they wanted a bag, I'd go get them one, bring it back to them.

01:09:47 **Q.** Where would you bring it to?

01:09:48 **A.** Where -- wherever we were at. If we were at a party, that's where it would go down at. If it was

01:09:54 wherever, you know what I mean, it wasn't like it was a planned out deal. If you see me, hey, can you get, yep, boom, here you go.

01:10:00 **Q.** Would it be fair to say that sometimes it was in a public place that you handed them the marijuana?

01:10:06 **A.** Not too often.

01:10:07 **Q.** Sometimes?

01:10:09 **A.** I might have then, but I couldn't -- we didn't party in public places.

01:10:15 **Q.** Who did you get the marijuana from?

01:10:21 **A.** The man's dead now.

01:10:23 **Q.** Who was that?

01:10:24 **A.** Grover Bartell.

01:10:26 **Q.** Was that the only person you ever bought marijuana from?

01:10:29 **A.** Oh, no.

01:10:31 **Q.** Did you ever buy marijuana from other people?

01:10:35 **A.** Yeah, a few other people, but not right -- few of them I didn't know, a few of them I did know.

01:10:40 **Q.** I want to direct your attention to 1994.

01:10:43 **A.** Oh, then there was -- there wasn't many other people besides Grover back then.

01:10:47 **Q.** Okay, was there any other person you bought marijuana from at that time?

01:10:51 **A.** Not regularly, no. If maybe a bag here or there

01:10:55 from somebody like if I buy them a bag I'd ask them if they
01:10:58 can get me a bag.

01:11:00 **Q.** And who were those people?

01:11:01 **A.** Same people I just mentioned.

01:11:03 **Q.** Regarding your statement on June fourteenth, 2013
01:11:12 with the Investigator Pietroski, were you asked any
01:11:17 questions about Roger Breckenridge on that date?

01:11:20 **A.** I don't believe so.

01:11:22 **Q.** Were you asked any questions about Michael Bohrer on
01:11:26 that date?

01:11:27 **A.** I don't believe so. I was asked if I knew him.
01:11:30 That's about all I can remember that -- I don't believe we
01:11:33 went into depth in there, it was more about the allegations
01:11:37 against me.

01:11:38 **Q.** Okay, what did you tell him about the allegations
01:11:41 against you, what specifically?

01:11:42 **A.** They were not true.

01:11:45 **Q.** What were you asked about specifically on that day?

01:11:47 **A.** If I had -- if I did what Tonya said I had did and I
01:11:51 said no, I didn't do what Tonya said I did. They said that
01:11:55 I buried Heidi Allen's body under the cabin, I believe you
01:11:59 guys said on Rice Road, I told them no. They went and
01:12:03 searched, they didn't find Heidi Allen in the cabin. Like
01:12:06 I said, she was lying.

01:12:07 **Q.** That was in June fourteenth, 2013 that they

01:12:10 conducted a search?

01:12:12 **A.** No. June fourteen I told them she was lying then.

01:12:15 **Q.** Okay, how long was the interview on June fourteenth,
01:12:19 2013?

01:12:20 **A.** Oh, I don't know, an hour maybe because I was in a
01:12:22 hurry because I had a visit, my family was there at Auburn.

01:12:26 **Q.** What did you say if anything about Jennifer Wescott
01:12:32 to them on that day?

01:12:34 **A.** Not very much. I didn't say very much to them at
01:12:38 all about anybody.

01:12:39 **Q.** Well, what was the conversation about that day then?

01:12:42 **A.** Yeah, maybe I -- yeah, I knew her, Jennifer was his
01:12:46 girlfriend, that's about it. I didn't -- I was not -- how
01:12:50 do I -- I -- there wasn't a discussion there. I didn't
01:12:54 want to do them signed statements, and that's the reason I
01:12:57 signed them the way I did. I'm doing life without parole
01:13:00 in prison, lady. I am not a snitch, plain and simple, and
01:13:04 that's what I told them. I'm not going to sit here and
01:13:07 tell on people, and then when I read the paper, what Roger
01:13:09 Allen put in the paper, which Roger Breckenridge put in the
01:13:13 paper, that yeah, he picked up the van, that he -- well,
01:13:17 sure, that's what I was told. I told them I had nothing
01:13:20 to -- knowingly nothing to do with Heidi Allen's
01:13:22 disappearance and I had nothing knowingly to do with Heidi
01:13:26 Allen's disappearance because I didn't know if that van was

01:13:28 on the back of my truck. I didn't inspect my loads when I
01:13:31 went and delivered them. They were cabled, they were done,
01:13:35 I got in the truck, I drove, I dropped them off, I came
01:13:38 back. They were crushed cars.

01:13:39 **Q.** When you just said that you are not a snitch, is it
01:13:43 your testimony that you would not tell on anyone under any
01:13:47 circumstances?

01:13:48 **A.** Not any circumstance. I'm doing life without parole
01:13:51 in prison, so that circumstance, nope, you're not going to
01:13:54 see me tell on anybody.

01:13:56 **Q.** So if you had information about Roger Breckenridge
01:14:00 confessing to Heidi Allen, you would not tell because you
01:14:04 don't want to be a snitch.

01:14:05 **A.** I told them what I knew what Roger told us. Told
01:14:09 them.

01:14:10 **Q.** If you knew what happened to Heidi Allen and who was
01:14:14 responsible, would you tell?

01:14:18 **A.** No. But I don't know.

01:14:28 **Q.** Okay. I want to talk to you about a woman named
01:14:33 Jennifer Wescott.

01:14:35 **A.** Yep.

01:14:35 **Q.** How long have you known Jennifer?

01:14:37 **A.** Oh, I met her probably ninety-four, ninety-five. I
01:14:43 can't remember exactly.

01:14:44 **Q.** Who introduced you to Jennifer Wescott?

01:14:47 **A.** I believe it was -- we stopped at Roger's, me and Paul Huggins (ph), and she was over there.

01:14:55 **Q.** She, Jennifer Wescott, was at --

01:14:57 **A.** Roger and Tonya, Roger and -- what's his wife's name now?

01:15:05 **Q.** Tracey?

01:15:05 **A.** Tracey's house.

01:15:07 **Q.** So Jennifer was with Roger and Tracy?

01:15:09 **A.** Was at Roger and Tracey's house. I believe she was her babysitter then. I don't know. That's where I met her. I can remember that's where I met her.

01:15:17 **Q.** How long -- well, what was your relationship with Jennifer Wescott?

01:15:24 **A.** No relationship at all.

01:15:28 **Q.** Were you friends?

01:15:29 **A.** After -- yeah, after a while, but not then we weren't. I didn't know her really, I just met her, you know what I mean? It's not like we were immediate friends because I really didn't know her.

01:15:38 **Q.** When did you become friends with Jennifer Wescott?

01:15:41 **A.** Oh, probably a couple years after that.

01:15:44 **Q.** How long --

01:15:45 **A.** Maybe less than a couple years, a year. It wasn't immediate, yeah, we're friends, you know what I mean? That's --

01:15:53 **Q.** So would you say -- would it be fair to say you were
01:15:56 friends with her sometime in ninety-four or ninety-five?

01:16:01 **A.** All -- I can't remember when I actually met the
01:16:04 girl, okay? Like I've tried to remember all this, tried to
01:16:08 start -- start it up, and I couldn't say yes it was
01:16:11 ninety-four or ninety-five and I wouldn't -- I don't know
01:16:13 if that's when it was. It could have been late
01:16:16 ninety-four, it could have been early ninety-five, it could
01:16:19 have been late ninety-five. It was around that time, yes,
01:16:21 I kind of know that.

01:16:23 **Q.** How often would you -- would you hang around with
01:16:27 Jennifer Wescott?

01:16:29 **A.** Not very often. I'd see her at different places.
01:16:32 I'd be at Roger's brother's house, they'd stop by there.
01:16:36 I'd be at Jeff Derby's house, they'd stop by there, but
01:16:40 other than that, we didn't hang out as friends, not until
01:16:42 way later.

01:16:44 **Q.** Did you also hang out with her at her parents'
01:16:47 house?

01:16:47 **A.** That was later when my buddy Paul Huggins started
01:16:52 going out with her sister Jessica.

01:16:54 **Q.** Okay.

01:16:54 **A.** That was ninety-six, ninety-seven.

01:16:57 **Q.** And would you hang out with her very often after
01:17:01 ninety-six and ninety-seven?

01:17:02 **A.** It was acquaintance. If she was there, hey, what's up, Jen, that's -- no. We never -- it wasn't like we went out, went to the bar or nothing, no, that's -- no.

01:17:09 **Q.** Did you ever develop a good or close friendship with her?

01:17:13 **A.** Yes, eventually, yes, I did, yep.

01:17:15 **Q.** And when was that?

01:17:16 **A.** When she was pregnant for her daughter.

01:17:21 **Q.** And would you spend some time with her?

01:17:23 **A.** Not really spend time time with her because me and Roger, like I said, me and Roger were never friends, and I just couldn't put up with Roger, so I wouldn't -- but Jen was an okay girl, and yeah, I'm the one that brought Roger to Oswego when she was having her baby 'cause he didn't know she was in labor at the hospital. She called me.

01:17:40 **Q.** Did the police advise you when they met with you on March fifteenth, 2013 about what Jennifer Wescott was saying you did?

01:17:51 **A.** No.

01:17:52 **Q.** Were you ever advised on any of the times you met with the police or the prosecutor what Jennifer Wescott was saying that you did?

01:18:02 **A.** No. The only reason I knew what Jen said was in the paper.

01:18:06 **Q.** So you were never spoken to by the police about

01:18:12 Jennifer Wescott's statement.

01:18:13 **A.** No, ma'am.

01:18:13 **Q.** You have to answer.

01:18:14 **A.** No, ma'am.

01:18:15 **Q.** Did you ever do drugs with Jennifer Wescott?

01:18:19 **A.** We smoked weed, yes.

01:18:21 MR. OAKES: Objection. Foundation as to when.

01:18:22 THE COURT: I'll allow it.

01:18:24 **Q.** When would that have been?

01:18:25 **A.** Back in ninety -- late nineties, early nineties,
01:18:30 middle nineties.

01:18:31 **Q.** Okay, did you ever do any other drugs with Jen
01:18:37 Wescott?

01:18:37 **A.** Not -- no.

01:18:40 **Q.** Are you certain of that?

01:18:41 **A.** Pretty certain.

01:18:43 **Q.** Did your friendship with Jennifer Wescott continue
01:18:51 after Roger and Jennifer split up?

01:18:54 **A.** Yes.

01:18:57 **Q.** In 2005, did you have an altercation with Roger
01:19:04 concerning Jennifer Wescott?

01:19:07 **A.** I believe it was at Jennifer's trailer out on -- I
01:19:11 can't remember the name of the road, it was out in -- I
01:19:13 don't even remember the name of the town either. Yes. He
01:19:16 showed up there.

01:19:17 Q. What happened during that confrontation?

01:19:19 A. He started screaming and hollering, and they ended up backing across the road and got stuck. I ended up pulling the van out of -- his brother's van out and Roger took off running when the cops showed up because Jennifer called the cops.

01:19:33 Q. Did he threaten you with any type of weapon that day in 2005?

01:19:36 A. I didn't see no weapon. It was dark out there.

01:19:39 Q. Did you give a statement to the police in 2005 asking him to be arrested?

01:19:44 A. There was a -- I don't know if that was 2005, but the night that he called my house and state troopers were there and they heard him over the phone threatening me, I ended up signing a statement at the state troopers barracks that yeah, he did call and was threatening to burn my house down and wreck my vehicles. Then I don't know if it was 2005 or not.

01:20:04 Q. Did he ever threaten you with a hammer?

01:20:07 A. I don't know.

01:20:10 Q. Would anything refresh your recollection like your statement?

01:20:14 A. Sure.

01:20:16 THE COURT: Where are we going with this?

01:20:18 MS. BIANCO: We're talking about the

01:20:19 relationship between he and the parties, Judge.
01:20:24 MR. OAKES: Actually, Your Honor, I was going
01:20:26 to say objection on the grounds of relevance.
01:20:28 THE COURT: I'll allow a few more questions,
01:20:30 but this seemingly very sideline of questioning is
01:20:36 getting a little too broad.
01:20:41 MS. BIANCO: Will you allow me to show his
01:20:43 statement, Your Honor?
01:20:43 THE COURT: Yeah, for limited purpose that he
01:20:45 signed a statement. What's the date of the statement,
01:21:08 Ms. Bianco?
01:21:09 MS. BIANCO: Date of the statement would be
01:21:11 June ninth, 2005. It's part of Defendant's Exhibit 57,
01:21:19 but I'm showing him only statement -- only the
01:21:22 statement if I may.
01:21:23 THE COURT: That's fine.
01:21:25 MS. BIANCO: May I approach the witness, Your
01:21:26 Honor?
01:21:26 THE COURT: Sure, absolutely.
01:21:44 **Q.** Showing you what's been marked Defendant's Exhibit
01:21:49 57, could you read that to yourself, sir?
01:21:59 (Whereupon, there was a pause in the
01:22:00 proceeding).
01:23:55 **Q.** Have you had an opportunity to review that
01:23:57 statement?

01:23:58 **A.** Yes, ma'am.

01:23:59 **Q.** Okay, what --

01:24:00 **A.** I remember that night.

01:24:02 **Q.** What happened that particular night?

01:24:04 **A.** Like I told them in the statement, I said -- I asked 01:24:06 him if there was a hammer, nobody ever found a hammer that 01:24:10 night, so we didn't find out if there was a hammer in his 01:24:12 hand or not. I said all I seen was an object in his hand, 01:24:15 and that night, like I said, Jimmy and Roger showed up at 01:24:20 Jen's, and Roger was mad that I was there, and the only 01:24:22 thing I did was went there because her two kids were there 01:24:24 and she was there, she had no food, I brought food out to 01:24:28 her house. I was getting ready to leave when they showed 01:24:31 up. Like I said, I ended up pulling the van that Jimmy and 01:24:34 Roger were in out of the ditch across the road because 01:24:36 Jimmy backed it across the road.

01:24:40 **Q.** Was this the same night that he threatened to burn 01:24:42 your house down?

01:24:44 **A.** No, ma'am.

01:24:46 MR. OAKES: Objection, Your Honor.

01:24:47 THE COURT: Please approach. I'm going to 01:24:50 sustain the objection right now.

01:25:47 (Whereupon, there was an off the record 01:25:48 discussion at the bench).

01:25:48 THE COURT: I'll allow the line of questioning

01:25:50 for a few more questions over your objection, Mr.
01:25:52 Oakes, I note.

01:25:54 MR. OAKES: Thank you.

01:25:55 MS. BIANCO: You will allow me to continue for
01:25:57 a few more questions, Judge?

01:25:58 THE COURT: Tie something very quickly or else
01:26:02 it's done.

01:26:02 **Q.** Has Roger Breckenridge ever said to you that he
01:26:06 burned Heidi Allen's body?

01:26:07 **A.** Nope.

01:26:09 **Q.** Has he ever mentioned a fire in connection with
01:26:10 Heidi Allen?

01:26:11 **A.** I don't believe it ever came out of Roger's mouth.

01:26:15 **Q.** Whose mouth did it come out of?

01:26:16 **A.** I don't know. There was a story that was going
01:26:18 around Oswego County everywhere.

01:26:20 **Q.** Do you know who said that story?

01:26:21 **A.** Nope.

01:26:22 **Q.** Were you a participant in that discussion?

01:26:25 **A.** No, ma'am. Different discussions, yeah, I would
01:26:31 have been participant in. People back then in nineties
01:26:36 everybody was -- had their idea of what happened, what went
01:26:40 on.

01:26:40 **Q.** And you would talk about your own ideas about what
01:26:41 went on?

01:26:42 **A.** Just mostly listening. Like I was -- I was twenty-four years old back then, I didn't even follow this case on the news. I -- I knew it was going on because all the searches, they were behind my mother's house four or five times searching the area there. They were everywhere searching.

01:26:58 **Q.** Your mother's house was located --

01:26:59 **A.** 103 County Route 35. In particular, no.

01:27:02 **Q.** And that's where you were living?

01:27:04 **A.** Yes, but they searched behind that house, they searched behind every house on that road. It's a big open area out there. They searched all over Oswego County.

01:27:14 **Q.** Did the police speak with you in 1994 about what happened to Heidi Allen?

01:27:19 **A.** Nope.

01:27:19 **Q.** Did they ask you permission to search the property in 1994?

01:27:23 **A.** They asked my mother, it was my mother's property. They asked everybody when they were doing the search, and everybody was more than welcome to let them go and have at it.

01:27:33 **Q.** Were you present when the police spoke with your mother?

01:27:35 **A.** No, I wasn't. I only know by my mother what my mother told me that they asked her.

01:27:41 Q. Have you ever been to a place called Spinners in the early nineties?

01:27:47 A. Spinners.

01:27:49 Q. Hotel slash bar?

01:27:52 A. Been in a lot of bars. I don't -- was it called Spinners back then?

01:27:58 Q. Well, I'm asking you.

01:27:59 A. Is it called Spinners now? Is it -- this is what I'm trying to --

01:28:03 Q. Back then in 1994, were you familiar with a place called Spinners?

01:28:09 A. No, ma'am.

01:28:10 Q. It would have been across the street from the Heidi Allen Center approximately.

01:28:19 A. There's no bar across the street from the Heidi Allen Center.

01:28:22 Q. About a fourth of a mile.

01:28:26 A. The only bar that describe is just down the road on -- it was 104 isn't it? It was next to the Heidi Allen deal. I don't know the name of the place.

01:28:38 Q. Have you ever --

01:28:39 A. Was headed towards -- headed towards the store on the right-hand side, there was an old bar there. I don't know what the name of it was.

01:28:47 Q. Have you ever been to a place called Medspar

01:28:51 Computer Repair?

01:28:53 **A.** I believe that's where my wife brought her computer
01:28:57 and I picked it up after it was repaired.

01:28:59 **Q.** Who did you go to the computer store with?

01:29:02 **A.** I was there by myself. I picked the computer up,
01:29:05 paid for it and left. I paid the lady that was there and
01:29:08 left.

01:29:09 **Q.** Was a man named Carl Robinson there?

01:29:13 **A.** Was Carl there? No, not that I know of.

01:29:16 **Q.** Do you know Carl Robinson?

01:29:17 **A.** Yeah, I know Carl, I sold him a trailer.

01:29:20 **Q.** How long have you known Carl?

01:29:22 **A.** Oh, I met him through my wife's father. Oh, I don't
01:29:30 know exactly how long I've known him. Probably around the
01:29:35 same time, nineties. He was a kid back then, used to hang
01:29:40 out with Rod's kids.

01:29:42 **Q.** Do you know if Carl was working in Medspar Computer
01:29:46 business?

01:29:48 **A.** I don't know what Carl was doing any time.

01:29:51 **Q.** Do you know who owned Medspar?

01:29:54 **A.** Only by the papers and being told by the DA when he
01:29:58 came up.

01:29:59 **Q.** Well, what did the DA tell you about Medspar?

01:30:02 **A.** He asked me if I knew Mike Bohrer and Medspar
01:30:06 Computer, and I said that's where my wife bought her

01:30:09 computer from, Mike Bohrer. I didn't know the name of it, but then I knew it then.

01:30:13 **Q.** Did you have a conversation with Mike Bohrer?

01:30:16 **A.** No, ma'am. I've never met Mike Bohrer. My wife bought the computer. I picked it up after it was repaired. I paid a lady that was at the counter for the repairs, picked the computer up and went home.

01:30:29 **Q.** Do you know a person named Rubin Sid Shaw?

01:30:34 **A.** Yes, ma'am.

01:30:35 **Q.** How do you know him?

01:30:37 **A.** I met Rubin through again, my wife's brother.

01:30:42 **Q.** And when was that?

01:30:43 **A.** When him and Tonya were living up in the trailer park. Oh, I don't know. Oh, that was the late nineties I believe. I'm not quite sure when I -- it was a long -- it was a while ago, it was fifteen, twenty years ago. He was married to Tonya then. She wasn't Priest then, she was Shaw.

01:31:02 **Q.** In 1994, did you smoke marijuana with a Rubin Shaw?

01:31:10 **A.** I could have. I don't know if he was ever at Rodney's when I was over at the trailer, if that was -- I don't know. Could have, quite possible.

01:31:20 **Q.** Did you know Tonya Priest?

01:31:23 **A.** I didn't know either of them, just that they lived next door to Shaggy, Rodney, I should say Rodney.

01:31:30 **Q.** In 1994 is it your testimony that you did not know Tonya Priest?

01:31:33 **A.** I didn't -- I met them through Rodney. I did not know them know them as people, you know what I mean?

01:31:40 **Q.** Did you later become more familiar with Tonya?

01:31:45 **A.** I know Tonya because of my wife. Other than that, that's --

01:31:51 **Q.** Would Tonya come -- where were you living when you were living with your wife?

01:31:55 **A.** In -- I forget the name of the trailer park. It was up on 69 in Happy Valley.

01:32:03 **Q.** Were you married at the time to your wife?

01:32:05 **A.** No, we weren't.

01:32:07 **Q.** When did you get married to your wife?

01:32:09 **A.** Oh, two years later, a year later.

01:32:13 **Q.** So --

01:32:14 **A.** Somewhere around there.

01:32:15 **Q.** When did Tonya and your wife friend -- befriend each other if you know?

01:32:22 **A.** Oh, they were friends before I -- they -- she knew Rodney, Rodney -- Sid was related to, they're related like cousins or something, I don't -- I don't know exactly.

01:32:34 THE COURT: Did you say Sid?

01:32:35 THE WITNESS: Yeah. That's what she called him. Rubin Sid Shaw.

01:32:38 THE COURT: Sid Shaw, okay.

01:32:39 **Q.** Rubin Sid Shaw. Was Tonya ever over at your trailer?

01:32:47 **A.** She was over to see my wife a lot, yes. I worked a lot so I wasn't there a lot.

01:32:52 **Q.** How old were you when you met your wife?

01:32:58 **A.** Oh, 2005. 2004 is when we were together. I met her back in -- around twenty-three, twenty-four years old, she was twelve, thirteen then, I knew her dad, and then he had his kids would come over on the weekend before he got custody of his kids. That's how I met them.

01:33:36 **Q.** I want to ask you some questions about -- about Tonya Priest. Did your wife and Tonya work together?

01:33:44 **A.** I believe she had a job with Tonya working doing yard work or something. It didn't last very long.

01:33:50 **Q.** Was that when you were living in the trailer?

01:33:52 **A.** I believe so.

01:33:54 **Q.** Would Tonya provide your wife rides to work?

01:33:59 **A.** No, it was the other way around. My wife was providing her the ride. That's why it didn't last long because Tonya's not -- they ended up fighting over gas money, this, that and the other thing, she's on the outs, she's a crazy chick.

01:34:18 **Q.** In 2006 did you have a conversation in front of Tonya and your wife about Heidi Allen?

01:34:29 A. Nope.

01:34:30 Q. Are you saying there was no conversation whatsoever?

01:34:34 A. None whatsoever.

01:34:36 Q. Do you recall a television show coming on in 2006 in
01:34:47 the presence of your wife and Tonya about Heidi Allen?

01:34:52 A. No, ma'am. Like I said, back then I worked more
01:34:57 than I was at home so I wouldn't have been at home when
01:35:00 Tonya was there watching TV. If I was at home it was late
01:35:03 and she was home with her kids.

01:35:04 Q. Did you ever have a conversation in the presence of
01:35:07 Tonya and your wife about what happened to rats around
01:35:12 here, meaning snitches?

01:35:13 A. No, ma'am, I did not.

01:35:17 Q. Did you ever have a conversation about Roger
01:35:19 Breckenridge in front of your wife and Tonya in 2006?

01:35:24 A. Not that I recall.

01:35:26 Q. Did you ever talk in front of Tonya and your wife
01:35:36 about you, Roger Breckenridge and Mike Bohrer abducting
01:35:42 Heidi Allen?

01:35:43 A. No, ma'am.

01:35:43 MR. OAKES: Objection, Your Honor.

01:35:45 THE COURT: What's your objection based on?

01:35:47 MR. OAKES: Leading.

01:35:48 THE COURT: You're going back to leading
01:35:50 questions. I'll allow it, but start asking the proper

01:35:52 form of questions please.

01:35:54 **Q.** What did you say to your wife and Tonya -- well,
01:36:08 strike that. Were you asked what happened to Heidi Allen
01:36:15 in front of your wife and Tonya?

01:36:16 **A.** No, ma'am.

01:36:18 **Q.** Did you respond, "Do you really want to know?"

01:36:22 **A.** No, ma'am.

01:36:23 MR. OAKES: Objection, Your Honor.

01:36:24 THE COURT: It's leading.

01:36:26 MR. OAKES: Leading and foundation.

01:36:28 MS. BIANCO: I have to put foundation in in
01:36:31 order to produce witnesses, Judge. I want to make sure
01:36:32 I establish a time and he can deny it.

01:36:35 THE COURT: Doesn't give you permission to
01:36:36 violate your ethical questioning, the questioning of
01:36:40 your witness. He's already said he did not have a
01:36:44 conversation. That question will not be considered,
01:36:49 that answer will not be considered by the Court.

01:36:51 **Q.** Do you know a person named Megan Shaw?

01:36:55 **A.** Yes, I do.

01:36:56 **Q.** How do you know Megan Shaw?

01:36:59 **A.** Through Rubin and Rubin's brother.

01:37:02 **Q.** And how long have you known Megan?

01:37:04 **A.** Oh, three, four years, something like that, five,
01:37:12 eight years.

01:37:13 Q. Have you ever visited Megan and Sid Shaw at their home?

01:37:18 A. Yeah.

01:37:19 Q. Where was their home?

01:37:21 A. Oh, I forget the name of the road. They had a trailer on a side road over Parish.

01:37:27 Q. Would it be Duchess Hill Road?

01:37:29 A. Yes, there it is; yes, ma'am.

01:37:31 Q. In April or May of 2010, did you have a conversation with the Shaws in their living room about how upset you were with your wife Vickie?

01:37:48 A. Yeah.

01:37:49 Q. Did you tell them that you were going to kill Vickie?

01:37:54 MR. OAKES: Objection.

01:37:55 THE COURT: Sustained.

01:37:56 MS. BIANCO: Judge, this is leading into why the next conversation is occurring. It's just a foundation question.

01:38:01 THE COURT: It's not a foundation question. Sustained.

01:38:04 Q. Did you talk to Rubin and Megan about disposing of Heidi Allen's body?

01:38:17 MR. OAKES: Objection.

01:38:18 A. No.

01:38:19 THE COURT: Sustained.

01:38:19 **Q.** What did you say about Heidi Allen to Rubin and Megan in April or May of 2010 in their living room about Heidi Allen?

01:38:30 **A.** Nothing.

01:38:32 **Q.** Did you talk to Rubin and Megan about Heidi Allen and a motorcycle club?

01:38:47 MR. OAKES: Objection, Your Honor. I think it's been asked and answered. He said he said nothing about Heidi Allen.

01:38:51 THE COURT: It's been asked and answered. Sustained.

01:38:54 **Q.** What did you tell Rubin and Megan about Heidi Allen's boyfriend?

01:39:02 MR. OAKES: Objection. Same objection, Your Honor.

01:39:05 THE COURT: No, it's -- no, it's a different question. I'll allow it.

01:39:07 **A.** Nothing at all.

01:39:08 **Q.** What did you tell Rubin and Megan about the Thibodeaus?

01:39:15 **A.** Nothing at all. I don't know anything about the Thibodeaus, only what we've heard on TV and the whole deal.

01:39:22 **Q.** You don't know the Thibodeau boys?

01:39:24 **A.** Never met them, never knew them, no.

01:39:26 **Q.** Do you know a person named Dan Barney?

01:39:30 **A.** Dan Barney, yes, I know Dan Barney.

01:39:33 **Q.** How do you know Dan Barney?

01:39:35 **A.** We both went to Mexico High School, his mother drove
01:39:39 my bus, his mother had her hair done at my mom's house,
01:39:42 I've known Dan since I was young, back when I was in --
01:39:46 seen him around town, Mexico, going to Giovo's. He was
01:39:49 always in town.

01:39:52 **Q.** Have you ever been to parties in that Dan Barney has
01:39:55 been at?

01:39:55 **A.** Lots of them over the years from the eighties
01:39:58 through the nineties. Not so much in the late nineties,
01:40:02 two-thousands, we both got older.

01:40:05 **Q.** Were any of these parties connected with a
01:40:08 motorcycle club?

01:40:09 **A.** None that I ever seen Danny at that I knew that he
01:40:13 was involved with a motorcycle club.

01:40:15 **Q.** I'm sorry, you knew he was involved?

01:40:17 **A.** Never knew that, no, I did not. I knew Danny hung
01:40:20 around with people. I didn't know he was involved with the
01:40:22 club.

01:40:23 **Q.** Have you ever been to parties with the Vicious
01:40:26 Circle Club?

01:40:27 **A.** Up north I have been to two white parties up north
01:40:30 for the Vicious Circle, yes.

01:40:36 **Q.** In February of 2010 you separated from your wife
01:41:04 Vickie, correct?
01:41:05 **A.** Yes, ma'am.
01:41:06 **Q.** Why?
01:41:07 **A.** Excuse me?
01:41:08 **Q.** Why?
01:41:09 **A.** She left.
01:41:11 **Q.** Were you arrested for anything in February of 2010?
01:41:15 **A.** I believe it was the end of February after I came
01:41:17 back from our vacation.
01:41:19 **Q.** Was it for domestic violence?
01:41:21 **A.** Yeah. She told them one story, then changed the
01:41:24 story when me and my kids still went on our vacation, so if
01:41:27 we want to get into that story, I'll tell the whole thing,
01:41:30 that's not a problem.
01:41:31 **Q.** Well --
01:41:32 THE COURT: Please approach.
01:43:08 (Whereupon, there was an off the record
01:43:10 discussion at the bench).
01:44:25 THE COURT: Ms. Bianco, do you want to make
01:44:27 sure your mike's back on. Thank you.
01:44:31 **Q.** After you and your wife separated from domestic
01:44:40 violence incident, did you talk to a number of people about
01:44:44 threatening to harm your wife?
01:44:46 **A.** No.

01:44:47 **Q.** You did not talk to Jamie McGillicuddy?

01:44:56 **A.** I used to work with Jamie McGillicuddy, yeah.

01:44:59 THE COURT: I didn't hear what you said.

01:45:00 **A.** I said yeah, I used to work with Jamie McGillicuddy,
01:45:05 but I never told him I was going to hurt her.

01:45:07 **Q.** Did you talk to Jen Wescott about wanting to hurt
01:45:09 your wife?

01:45:10 **A.** No.

01:45:10 **Q.** Did you talk to Amanda Braley?

01:45:15 **A.** No.

01:45:16 **Q.** Rubin or Sid Shaw about wanting to hurt your wife?

01:45:21 **A.** No.

01:45:21 **Q.** Did you ever make statements in connection with
01:45:27 threatening to kill your wife like you did Heidi Allen?

01:45:32 **A.** No.

01:45:33 **Q.** Did you ever make any statements about threatening
01:46:00 to kill your wife just like you did disposing of Heidi
01:46:05 Allen's body?

01:46:05 **A.** No, ma'am.

01:46:06 **Q.** The night before your wife died, were you at a
01:46:20 party?

01:46:21 **A.** Yes, ma'am.

01:46:21 **Q.** Were you at a party with a man by the name of
01:46:33 Jonathan Barkley?

01:46:34 **A.** John was there, yeah.

01:46:36 **Q.** Did you ever tell Jonathan Barkley that you were
01:46:41 going to hurt your wife the next day?

01:46:43 **A.** No, ma'am.

01:46:44 **Q.** Did you take Jonathan Barkley's truck the night of
01:46:48 that party?

01:46:48 **A.** I was driving John's truck that night, yes.

01:46:51 **Q.** And the next day, when your wife was killed, were
01:46:59 you home -- excuse me. Were you in her house and there was
01:47:03 a police standoff?

01:47:05 **A.** Yes.

01:47:05 **Q.** Did you receive a call from the number 935-1042?

01:47:12 **A.** I received a lot of calls that day.

01:47:15 **Q.** Did Jonathan Barkley call you?

01:47:17 **A.** No.

01:47:19 **Q.** Do you know whose number 935-1042 is?

01:47:23 **A.** No, ma'am, I sure don't.

01:47:25 **Q.** Did you ever receive a text on the day -- let me
01:47:34 backtrack. That was September tenth, is that right?

01:47:38 **A.** Yes, ma'am.

01:47:38 **Q.** September tenth?

01:47:39 **A.** It was September twelfth actually, 2010.

01:47:41 **Q.** Okay, and while you were in the house, you were
01:47:45 receiving a number of texts, correct?

01:47:47 **A.** Texts from everything.

01:47:49 **Q.** And --

01:47:49 **A.** Phone calls, texts.

01:47:51 **Q.** Pardon?

01:47:52 **A.** Phone calls, texts, all kinds of stuff going on that day.

01:47:56 **Q.** And that was from people you knew, is that right?

01:47:58 **A.** From everybody. I think on the paper that Mr. O'Brien sent me from the Post-Standard it showed that I had phone calls from people wanting cars picked up too, messages on my -- my deal, so everybody was still calling my phone.

01:48:17 **Q.** Do you remember receiving a text that said, "Heidi ciao." Do you remember that text?

01:48:28 **A.** No, I don't remember. I finally seen that was when Mr. O'Brien sent me the paper with that on there. That's how I know that there was people calling me about cars.

01:48:38 **Q.** Do you admit --

01:48:39 **A.** From that paper.

01:48:40 **Q.** Did you receive that text?

01:48:42 **A.** It says so on the paper. I don't remember ever getting it or reading it.

01:48:51 **Q.** "Heidi ciao." What does that mean to you?

01:48:54 **A.** I have no idea. Doesn't mean anything to me.

01:48:57 **Q.** And you don't know who sent that?

01:48:59 **A.** No, ma'am, I don't.

01:49:00 **Q.** And that was approximately ten minutes after your

01:49:03 wife was killed?

01:49:05 **A.** I don't know what the time is on the call, you've got the paper, I don't. I don't know exactly when that all happened so.

01:49:15 MS. BIANCO: May I approach, Your Honor?

01:49:16 THE COURT: Yes.

01:49:17 **Q.** Showing you what's been marked as Defendant's Exhibit 45 --

01:49:34 MS. BIANCO: May I have a moment, Your Honor?

01:49:35 THE COURT: Sure.

01:49:36 (Whereupon, there was a pause in the proceeding.)

01:50:13 THE COURT: Referring to -- are you referring to a specific page on forty-five?

01:50:17 MS. BIANCO: Yes. Page thirty-three of Exhibit 45, the fourth call down from the top.

01:50:24 **A.** Yes. This is the same paper that I got from the Post-Standard they sent in asking -- see I don't -- no idea what it meant, who it was from. Just like I told the DA when he asked me, just like I told everybody, I had no idea what it was.

01:50:43 **Q.** But that text went to your phone, correct?

01:50:46 **A.** I believe it did. This is my phone, right? If this is the report for it, so like I said, I don't remember half of these texts and phone calls that day.

01:50:58 **Q.** What time was your wife killed?
01:51:02 **A.** Oh, I believe -- I don't even remember the time that
01:51:07 that happened. I know it was in the afternoon but I --
01:51:10 that day is still --
01:51:16 **Q.** You received this call, "Ciao Heidi," at 12:12, is
01:51:20 that right?
01:51:20 **A.** I believe so.
01:51:21 **Q.** And you received a same -- another call from the
01:51:25 same number just a few minutes before didn't you?
01:51:29 **A.** I don't know. I didn't get the paper with that text
01:51:32 on there so I wouldn't know. I only got that one page that
01:51:34 you just showed me from the Post-Standard guy, Mr. O'Brien.
01:51:40 MS. BIANCO: If I may have a moment, Your
01:51:43 Honor.
01:51:43 THE COURT: Sure.
01:51:43 (Whereupon, there was a pause in the
01:52:02 proceeding.)
01:52:02 **Q.** If I showed you Exhibit 44, 45 again, would you be
01:52:08 able to recognize whether that's the same number, entry
01:52:11 number two?
01:52:11 THE COURT: Is that still page thirty-three?
01:52:14 MS. BIANCO: It is, Your Honor.
01:52:16 **A.** That's the same thing you just showed me.
01:52:16 **Q.** Four lines down, "Ciao Heidi," two lines down, same
01:52:20 caller, correct?

01:52:22 **A.** Two lines down you said? I'm trying to -- that's
01:52:25 not circled like the Heidi deal is. Wireless call. Yeah.
01:52:31 It looks like it.

01:52:32 **Q.** So someone called you first, and it doesn't appear
01:52:36 you answered the phone, correct?

01:52:37 **A.** I guess.

01:52:38 **Q.** And then the same person called you and said, "Ciao
01:52:41 Heidi."

01:52:43 **A.** No idea.

01:52:44 **Q.** And you have no idea who that was from?

01:52:46 **A.** No, ma'am.

01:52:47 **Q.** Have you ever gotten any other messages relating to
01:52:50 any Heidis?

01:52:51 **A.** None that I know of. That one call there was from
01:52:57 Liverpool so I don't know who that -- like I said, I was
01:53:00 getting calls on that page right there from people wanting
01:53:03 cars picked up, scrap cars, so I don't know if that is --
01:53:07 what it was, you know what I mean? I couldn't tell you
01:53:09 that I -- I don't know the number so that's --

01:53:13 **Q.** What was your relationship with Jonathan Barkley at
01:53:16 that time?

01:53:16 **A.** There was no relationship. He was over at Jay's a
01:53:20 lot and I was at Jay's a lot. Other than that --

01:53:23 **Q.** Were you friends?

01:53:24 **A.** Pretty -- yeah, you could say we were okay, we

01:53:27 weren't really close friends, you know what I mean, because
01:53:30 I didn't know him that well.

01:53:31 **Q.** But you took his truck that night.

01:53:33 **A.** He was drinking, he rode home, I drove his truck
01:53:36 home. I did have Jay McGillicuddy's Jeep, but it broke
01:53:44 down at my house, and we walked, me and a friend of mine
01:53:46 walked over to the party from my house because it was right
01:53:49 around the corner from my house, and then we drove John's
01:53:51 truck back over to my cousin's that night and that's where
01:53:54 we stayed.

01:53:55 **Q.** You and Jay McGillicuddy stayed at your cousin's?

01:54:00 **A.** No. Jay McGillicuddy -- John went with Jay
01:54:03 McGillicuddy that night because he was drinking. Me --
01:54:07 Etta Maynes (ph) and I went to this party from my house
01:54:12 that night. John was drinking, was too drunk. Jay made
01:54:16 him go home with him. We took John's truck. We stayed at
01:54:20 my cousin's that night.

01:54:24 **Q.** Was Jay McGillicuddy someone you were close with?

01:54:29 **A.** Yeah. I've known Jay for a long time, from school.
01:54:35 I wouldn't say close close, but we were friends.

01:54:37 **Q.** Well, after your arrest, did he help you out
01:54:39 financially?

01:54:40 **A.** He didn't help me financially, no.

01:54:43 **Q.** Did he help you with your lawyer?

01:54:45 **A.** No, not at all. He tried telling people that he

01:54:48 did. I paid everything to my lawyer.

01:54:51 **Q.** Did he show up at the scene of the murder to pick up 01:54:54 your son before the police arrived?

01:54:56 **A.** He showed up there, yeah, but he -- the cops were 01:54:59 there before him I do believe.

01:55:00 **Q.** Did he take your son?

01:55:01 **A.** I believe I was sitting in the apartment, I don't 01:55:05 know who took my son. It could have been Jay, he says it 01:55:07 was him, so I don't -- I wasn't outside. I don't know who 01:55:11 actually picked him up and took him away.

01:55:13 **Q.** Was Jay McGillicuddy someone you had a lot of 01:55:18 conversations with on the telephone while you were 01:55:19 incarcerated pending the trial of your wife?

01:55:23 MR. OAKES: Objection, Your Honor, relevance.

01:55:25 THE COURT: Can you explain the relevance?

01:55:27 MS. BIANCO: Judge, I'm going to get into the 01:55:29 details of these conversations.

01:55:30 THE COURT: Understood details, but I want to 01:55:33 know the relevance first.

01:55:34 MS. BIANCO: Did you have a conversation -- 01:55:35 can I ask the question and I'll connect it right now?

01:55:37 THE COURT: Okay.

01:55:37 **Q.** Did you have a conversation with Jay McGillicuddy 01:55:42 about a disappearing act and him saying, "He's good at 01:55:46 that, that and kidnapping." Did you have that

01:55:49 conversation?

01:55:50 **A.** Not that I know of.

01:55:51 **Q.** Are you saying that conversation didn't happen or
01:55:56 you don't remember?

01:55:57 **A.** Not that I know of.

01:55:58 **Q.** Would something refresh your recollection like the
01:56:01 conversation itself?

01:56:03 THE COURT: Hold on. I don't think I
01:56:05 understand the question you're posing at this point.
01:56:08 Who allegedly made this statement?

01:56:09 MS. BIANCO: McGillicuddy is talking about
01:56:12 being good at kidnapping and disappearing acts.

01:56:15 THE COURT: He's saying that he's good at it?

01:56:17 MS. BIANCO: And Mr. Steen is on the phone
01:56:19 with him.

01:56:21 THE COURT: Come up.

01:56:22 (Whereupon, there was an off the record
01:56:51 discussion at the bench.)

01:56:51 MS. BIANCO: May I have a moment, Your Honor?

01:56:53 THE COURT: Yes. Your mike's back on. Be
01:56:55 careful.

01:56:57 (Whereupon, there was a pause in the
01:57:54 proceeding.)

01:57:54 **Q.** Just so we're clear, you took Jonathan Barkley's
01:57:58 truck the night of that party, correct?

01:57:59 **A.** Yes, ma'am.

01:58:00 **Q.** And you took Jonathan Barkley's truck to the scene
01:58:04 when your wife was murdered, drove it to her house?

01:58:06 **A.** Yes, ma'am.

01:58:07 **Q.** And you do not know who sent you the text, "Ciao
01:58:12 Heidi?"

01:58:12 **A.** No, ma'am.

01:58:14 **Q.** And you deny making statements to anyone about
01:58:20 abducting or killing Heidi Allen.

01:58:23 **A.** I have never said to anyone that I abducted or
01:58:27 killed Heidi Allen.

01:58:28 **Q.** Did you ever say to anyone at any time that you
01:58:32 helped destroy the van that she was abducted in?

01:58:36 **A.** Never. The only thing -- I'll wait till you ask the
01:58:39 question then.

01:58:40 **Q.** The only thing --

01:58:41 **A.** The only thing I've ever said to anybody is what
01:58:44 Roger told me. That's all I ever known, and then like I
01:58:47 told you earlier in this deal is I went to Rich Murtaugh
01:58:51 and asked him. That's all I ever known about this case or
01:58:54 any part that I've had in it, if I had any part in it, is
01:58:57 from what Roger said. Plain and simple. Knowingly, I had
01:59:02 nothing to do with any of this Heidi Allen stuff.
01:59:07 Knowingly.

01:59:08 **Q.** You said knowingly.

01:59:09 **A.** Knowingly. Until Roger told me that I had a stollen van on my truck or that what was in that van, I knowingly didn't know that I -- that it was there.

01:59:19 **Q.** Are you saying --

01:59:19 **A.** And I went and asked if it was and I was told it wasn't.

01:59:23 **Q.** But are you saying you don't know whether you were involved in the destruction of Heidi Allen's body and the van?

01:59:29 **A.** Knowingly I wasn't, but if I drove that truck up there, then I guess I was the one that hauled it, but I had nothing to do with getting to doing it. I didn't know it was on my load is what I'm saying. I did not expect my -- inspect my load. I picked up a load of crushed cars, took them to Canada. I was driving a step deck trailer. I backed up in front of the shredder. That's where I had to back up in front of. If I would have had a high flat on, they would have taken the cars off and stacked them in the yard because the yard was full of cars, but since I had a step deck trailer and all the cars were uneven, they can't pull them off in neat stacks, the crane unloaded it.

02:00:09 **Q.** You watched the crane unload it?

02:00:11 **A.** Every load I took up on a step back trailer I watched them unload.

02:00:14 **Q.** And one of the vehicles was a white van, correct?

02:00:18 **A.** No idea. I had all kinds of vans, all kinds of
02:00:21 cars, all different colors.

02:00:23 **Q.** And --

02:00:23 **A.** He never told me what color the van was.
02:00:26 I've never -- all's I was told is I took a hot car
02:00:30 and it was a van, and then do you know what was in
02:00:32 the van is all I was ever told. I don't know what
02:00:35 color, if it was green, black, blue, purple. I don't
02:00:38 know what color it was, and I watched, yeah, hundreds
02:00:41 of loads. I can't say hundreds because I didn't take
02:00:45 hundreds, but every load I took up on the step deck,
02:00:47 watched them get unloaded by the crane, yes, ma'am, I
02:00:50 did.

02:00:50 **Q.** And when you said, "He told me that Heidi Allen was
02:00:54 in the van," who would that be?

02:00:56 **A.** Roger Allen, Roger Breckenridge.

02:00:59 MR. OAKES: Objection, Your Honor.

02:01:00 THE COURT: Asked and alleged.

02:01:01 MR. OAKES: I think that's a
02:01:04 mischaracterization of his response.

02:01:05 THE COURT: I understand. The line's already
02:01:07 been and asked and answered.

02:01:10 MS. BIANCO: No further questions.

02:01:12 THE COURT: Thank you. Mr. Oakes?

02:01:17 MR. OAKES: Thank you. Yes, please.

02:01:19 CROSS-EXAMINATION

02:01:20 BY MR. OAKES:

02:01:21 **Q.** Good afternoon, Mr. Steen.

02:02:07 **A.** Good afternoon.

02:02:08 **Q.** Mr. Steen, you said back in 1994 you were living in your mom's house?

02:02:17 **A.** Yes, sir.

02:02:17 **Q.** That was at your best recollection, 103 County Route 35?

02:02:21 **A.** Yes, sir.

02:02:22 **Q.** What town was that in?

02:02:24 **A.** Palermo. It's actually a Fulton address, Fulton phone number, Mexico School District and Town of Palermo.

02:02:30 **Q.** Okay, and at that time you were employed?

02:02:33 **A.** I do believe --

02:02:35 **Q.** 1994?

02:02:36 **A.** I believe I was working like I said for Roger Allen driving dump truck I believe. That was right after Mohawk Valley Oil was in there so I was delivering fuel oil at some point in time. There was a lot of jobs back then.

02:02:49 **Q.** And around the time Heidi Allen's disappearance and abduction, your recollection you were working for Allen?

02:02:56 **A.** I believe I was, yeah, I was working Rogers Allen's because I remember having a conversation with a couple of the drivers out on the road and then asking was she related

02:03:05 to Roger Allen because we worked for Roger and that's when
02:03:09 I remember them saying I don't think so.

02:03:10 **Q.** And it was some time after Heidi's disappearance,
02:03:14 ninety-five, ninety-six I think you testified, you began
02:03:17 working for Murtaugh's over at Bristol Hill, or I take that
02:03:20 back, not working for Mr. Murtaugh, but hauling out of his
02:03:23 yard?

02:03:23 **A.** Yeah. I was working for Phil White, and I believe
02:03:26 it was that -- it was after the Roger Allen deal. I don't
02:03:28 know exactly the years, I don't know exactly, like I told
02:03:32 you guys when you were up at Attica, it's twenty years ago
02:03:35 and I don't know exactly the years where I worked, how I
02:03:37 worked, who I worked for, and it was -- I know I worked for
02:03:41 Roger Allen, then I went to work for Dick Murtaugh, but it
02:03:45 wasn't Dick Murtaugh, it was Phil White working for Dick
02:03:49 Murtaugh. Phil hauled Dick's scrap.

02:03:51 **Q.** So Phil hauled Dick Murtaugh's scrap, you basically
02:03:55 worked for Phil, if he told you to take a load, that's
02:03:58 where you would take it?

02:03:59 **A.** That's exactly what I did.

02:04:00 **Q.** And you would haul loads to any number of places, is
02:04:04 that correct?

02:04:04 **A.** Yes, sir.

02:04:04 **Q.** What were some of those places?

02:04:05 **A.** Well, we took loads to Erie, Pennsylvania, we took

02:04:08 loads out to Rochester, two different places out there. We
02:04:13 took up to Canada, two different places, Ottawa, and then
02:04:16 over near Toronto, and whenever they -- you were going, you
02:04:21 pick them up all over the place, but those were the four.
02:04:24 I've delivered loads to Roth Steel in Syracuse before I was
02:04:27 working for them, and that was -- wherever he sent the
02:04:31 loads or sold the loads to, that's where you took them.

02:04:35 **Q.** Would it be fair to say then you didn't pick the
02:04:37 location where these loads were going?

02:04:39 **A.** No, sir.

02:04:39 **Q.** You were told where you were driving?

02:04:44 **A.** Yes, sir.

02:04:44 **Q.** That's where you went?

02:04:44 **A.** You come in because usually the scrap business it
02:04:47 goes by monthly, prices go by monthly, you set up a
02:04:50 contract. Usually for the whole month that's where we haul
02:04:52 to. If we started hauling to Canada the beginning of the
02:04:55 month, that's where we were hauling to, up to Toronto,
02:04:58 unless we hauled to Rochester or Erie, that's where we go
02:05:02 is Erie, and that's usually how it worked.

02:05:06 **Q.** Mr. Steen, you said you've read certain newspaper
02:05:16 accounts regarding the case, some of the allegations that
02:05:19 have been made?

02:05:19 **A.** Yes, sir.

02:05:19 **Q.** And would you agree that a lot of focus has been put

02:05:23 upon the fact that you may have hauled a load up to Canada? Would you agree with that?

02:05:27 **A.** Yes.

02:05:28 **Q.** Was that uncommon for you to haul loads up to Canada at that time?

02:05:31 **A.** Hauled lots of loads of cars to Canada.

02:05:35 **Q.** How many times would you say you'd hauled scrap up to Canada?

02:05:37 **A.** Oh, God, we'd go five times a week, and just -- if we were just -- if I was to say we went for one month, that's five, twenty loads in that month, you know what I mean, alone, so I worked over there a couple of years, so I -- that's hard to say because we hauled a lot of loads to Canada alone. I only went to Erie two, three times, Erie, Pennsylvania, and we went to Rochester a lot or Canada a lot. That's where we hauled most of the loads to is Rochester and Canada.

02:06:09 **Q.** Okay, now you have talked with Ms. Bianco about some conversations you had with Roger and I want to be clear. Did you have any knowing, intentional involvement with the Heidi Allen abduction?

02:06:26 **A.** No, sir, I did not.

02:06:27 **Q.** Did you have any knowing, intentional participation in the disposal of Heidi Allen's remains?

02:06:33 **A.** No, sir, I did not. I didn't know I was doing that

02:06:37 until after it was done, and I only knew, like I said, it was a stollen vehicle at first, and then it was "guess what was in the vehicle."

02:06:46 **Q.** Now, Ms. Bianco asked you about was it March fifteen, 2013 statement you gave to Investigator Pietroski of the Sheriff's Department. Do you remember that questioning?

02:06:58 **A.** At Auburn, yeah.

02:07:00 **Q.** And again, at that point you said you had nothing to do with Heidi Allen, you knew nothing about it.

02:07:05 **A.** Exactly.

02:07:05 **Q.** And you didn't tell Investigator Pietroski about Roger Breckenridge, about Roger Breckenridge's comment, is that fair to say?

02:07:14 **A.** Exactly.

02:07:14 **Q.** And a few months later, on June fourteenth, 2013 Investigator Pietroski met you again at the state facility?

02:07:23 **A.** Yep.

02:07:23 **Q.** And you gave a second statement. I think that was at the Auburn Correctional Facility?

02:07:28 **A.** Yeah. Both of them were at Auburn, yep.

02:07:30 **Q.** And that's a statement that you wrote down you said I know nothing about anything that happened to Heidi Allen?

02:07:35 **A.** Yes, sir.

02:07:36 **Q.** And again, there you didn't say anything about

02:07:38 Roger, correct?

02:07:38 A. Yep.

02:07:39 Q. You're in state prison now, correct?

02:07:42 A. Yes, sir.

02:07:43 Q. Serving a life sentence?

02:07:45 A. Yes, sir.

02:07:45 Q. And I believe Ms. Bianco asked you some questions 02:07:57 about a December twenty-ninth meeting that took place 02:07:58 between yourself, me, Mr. Moody and two sheriff's 02:08:02 investigators.

02:08:03 A. Yes, sir.

02:08:04 Q. Do you remember that?

02:08:04 A. Yep.

02:08:05 Q. Okay, and I was asking you a lot of questions wasn't 02:08:09 I?

02:08:10 A. You sure were.

02:08:11 Q. And I told you I wanted to get to --

02:08:13 MS. BIANCO: Objection. He's acting as an 02:08:16 unsworn witness now, Judge.

02:08:17 THE COURT: Overruled.

02:08:19 Q. What did I tell you my objective was?

02:08:22 A. To find out what happened.

02:08:25 Q. To find out the truth?

02:08:27 A. Yeah.

02:08:27 Q. Whatever that was. Would it be fair to say I asked

02:08:31 you about a number of different people, whether they were involved?

02:08:34 **A.** You sure did.

02:08:34 **Q.** And ultimately I at one point asked you if you knew where Heidi's remains might potentially be.

02:08:41 **A.** And what I told you was is if what I was told was true, she'd be in Canada in a landfill. If that is what actually happened, that van was put on my truck or anybody's truck and it went through that shredder, the shredder makes cars into little bitty pieces, okay? The waste from a car, the foam, the plastic, everything that's non-metallic in a car, goes out one belt. Then it goes into another machine and it gets to the non-metallic metal separated and then the garbage goes out to the back and then that goes to a landfill and that's where all -- if that's what I was told back then happened, which I don't think was true, but if it is, that's what happened, that's where it would be, and that's exactly what I told you on the twenty-ninth of December.

02:09:39 **Q.** Mr. Steen, when I first asked you the question though about Heidi's potential location, did you give a response right away?

02:09:48 **A.** No, I didn't.

02:09:49 **Q.** Why not?

02:09:49 **A.** Because I didn't feel that it was -- I'm in prison

02:09:54 for life, okay, and snitches -- and then after I thought
02:09:57 about it, it isn't -- I'm not a snitch because Roger told
02:10:00 these people after 'cause Mr. O'Brien sent me papers that
02:10:04 Roger picked the van up. He told the sheriffs, told you or
02:10:08 whoever, whoever interviewed him, the Post-Standard,
02:10:11 everybody, that he picked the van up at Thibodeau's house,
02:10:15 him and Rich Murtaugh picked it up, so I guess I'm not
02:10:18 telling on nobody. That's why I came out and I told you
02:10:21 what I told you in that interview, and I didn't say
02:10:23 anything in the back two interviews because nobody was --
02:10:26 it was not my place to tell on somebody then and I
02:10:29 wouldn't.

02:10:30 **Q.** As part of that same conversation, was there a
02:10:35 discussion between you and me about your kids?

02:10:38 **A.** Sure was.

02:10:39 **Q.** What was that conversation?

02:10:41 **A.** You said as a parent, I'd want to know where my kids
02:10:45 were at and that's what Heidi's parents would want to know
02:10:49 where that was, and if I was still seeing my kids, and I
02:10:51 said yeah, and like I said, I -- if what I was told was
02:10:57 true, if that is the truth of what happened, that van, if
02:11:00 that contained -- that van contained what it contained,
02:11:04 then like I told you, that's where it would be at is in a
02:11:07 landfill somewhere in Canada.

02:11:10 **Q.** But fair to say you don't actually know, it would be

02:11:12 speculation?

02:11:13 **A.** I don't know, so that's like I said, I don't know
02:11:15 where Heidi's at.

02:11:17 **Q.** You knew Roger Breckenridge for a period of years?

02:11:23 **A.** Yeah. Like I said, we went to school, we -- he
02:11:26 lived in Mexico, he was my wife's uncle. Yeah, I knew
02:11:31 Roger.

02:11:31 **Q.** And I believe you told this court that through your
02:11:34 interactions with Roger, you had an opinion that he was
02:11:37 full of hot air was your term?

02:11:40 **A.** Yeah, yes, sir.

02:11:41 **Q.** Why did you reach that conclusion?

02:11:42 **A.** Roger's constantly doing something like this. He
02:11:46 hears something, he's got to be a part of it. It was --
02:11:49 it's just the way he's -- he's got to be in this limelight,
02:11:55 he's got to -- he thinks that he did -- he was there, he
02:11:59 was -- if he was he was, if he wasn't I -- like that's why
02:12:01 I went when he told me that him and Rich did this, I went
02:12:04 to Rich Murtaugh and asked him 'cause that's who Phil White
02:12:09 worked for, that's his call, I was hauling. They told me
02:12:12 no. I was good with it.

02:12:14 **Q.** Do you recall any other stories or fabrications that
02:12:19 Roger Breckenridge would tell over the years?

02:12:21 **A.** Just the same one, you know what I mean, that that's
02:12:24 what was done.

02:12:34 **Q.** Now I believe you said you first met Jen Wescott through Roger Breckenridge?

02:12:40 **A.** Yep, at his house on Kenyon Road.

02:12:42 **Q.** And at the time Roger was living on Kenyon Road?

02:12:47 **A.** I believe so. That's whose trailer I was told I was at, Tracey's and Roger's. I went there with Paul Huggins.

02:12:55 **Q.** And that's what I was going to ask you. At the time was he married to Tracey Breckenridge?

02:12:59 **A.** I believe so.

02:12:59 **Q.** And he had a number of kids with Tracey to your understanding?

02:13:04 **A.** I believe so.

02:13:04 **Q.** And you're not exactly sure what the nature of that relationship was between Jen Wescott and Roger at that time?

02:13:09 **A.** Not --

02:13:10 **Q.** When you first met them.

02:13:11 **A.** Yeah. I don't know exactly what their relationship was, but that's -- they were -- what they were doing is their business.

02:13:18 **Q.** Okay, what time period was that, Mr. Steen, ballpark.

02:13:23 **A.** The early to mid-nineties I believe, I would -- she was telling me it was ninety-four, ninety-five. I might be -- like I said, I can't -- I don't -- I never not

02:13:33 admitted to smoking marijuana, and I've smoked a lot of it,
02:13:35 so to tell you exactly dates, that will never happen. I
02:13:39 don't know exact dates any more.
02:13:40 **Q.** Fair enough. You said you had a good friend Paul
02:13:43 Huggins?
02:13:44 **A.** Yeah.
02:13:44 **Q.** He was dating Jen's sister I think it was Jessica?
02:13:46 **A.** Yeah, they had a kid together, a daughter, maybe
02:13:49 two. I can't remember if there is one or two.
02:13:51 **Q.** And is Jessica younger or older than Jen?
02:13:53 **A.** Younger. She's the youngest.
02:13:55 **Q.** Youngest, okay, and when was Paul dating Jessica?
02:14:00 **A.** Oh, back in the nineties. I don't know if it was --
02:14:04 I don't know their exact time frame, I don't, I don't. It
02:14:09 was in the nineties. I know that's when they first started
02:14:12 going out. I know she's married to someone else now. I
02:14:15 know they're not together any more.
02:14:16 **Q.** But you said you went to a party at one point at
02:14:19 Jen's parents' place I think it was, Paul is her dad?
02:14:21 **A.** Paul is her dad, yeah, Paul Wescott, yeah.
02:14:25 **Q.** And that was over at County Route 38?
02:14:27 **A.** I believe that's where Route 38 goes right from 45
02:14:30 straight across to Hastings, I believe that's the one.
02:14:33 **Q.** Is that by the bend right by the railroad tracks?
02:14:35 **A.** Yep, sure is.

02:14:37 **Q.** Was Jen living there at the time?
02:14:39 **A.** I don't know if Jen and Roger were living there at
02:14:41 the time. I know they lived there with her parents for a
02:14:44 while, they were living downstairs or upstairs, or I don't
02:14:49 know, they lived there a few times when Jen had Jacob,
02:14:51 that's their son, they lived there for a little while, and
02:14:54 then after that they were -- you never knew with them two.
02:14:57 **Q.** And that's actually what I was going to ask you, Mr.
02:14:59 Steen, is when they had -- well, Jen Wescott, Roger
02:15:03 Breckenridge have two kids together, Jacob and Kristen?
02:15:06 **A.** Yep.
02:15:07 **Q.** Jacob's their boy, Kristen's the girl?
02:15:09 **A.** The oldest, Kristen's the youngest.
02:15:11 **Q.** So when Jacob was a baby, were they living at Paul
02:15:15 Wescott's place, Jen's parents' place?
02:15:17 **A.** I believe so.
02:15:18 **Q.** Okay. Did you ever know Jen or Roger to live over
02:15:23 on Rice Road?
02:15:25 **A.** I never was at their house on Rice Road if they
02:15:28 lived there. I -- that's what blows my mind about this
02:15:32 whole thing. I never remember them living on Rice Road,
02:15:33 but I never went to Roger and Jen's house that often. They
02:15:36 were mostly out and about. You could see them anywhere.
02:15:40 You could see them at Jeff Derby's, Rodney West's, over
02:15:44 this house, over here, in Mexico. It -- they -- they were

02:15:48 never home even if they did have a house so you never went
02:15:51 to their house because they were never home any ways.

02:15:53 **Q.** Would it be fair to say then that you were never at
02:15:56 a residence lived in by Jen and Roger on Rice Road in
02:16:01 Mexico?

02:16:02 **A.** I've never been to a -- yeah, yeah, you're right,
02:16:05 no, I've never been to a residence on Rice Road.

02:16:11 **Q.** You talked with Ms. Bianco about Tonya Priest, and
02:16:20 basically you knew her through your wife Vickie?

02:16:23 **A.** Yep.

02:16:24 **Q.** And at the time you first met Tonya, you were --
02:16:28 were you just dating Vicki or were you engaged to her?

02:16:31 **A.** I met Tonya before Vickie.

02:16:33 **Q.** Okay.

02:16:33 **A.** I was engaged or going out with Vickie. I met her
02:16:36 from her father is what I told Ms. Bianco. They lived next
02:16:40 door to Rodney West up in the trailer park that we bought
02:16:43 the trailer from him at in Happy Valley. They lived next
02:16:47 door to him. That's how I ended up meeting them, but I
02:16:50 didn't really know them, I met them, hey, what's up, and
02:16:53 then I -- I never went over their house and hung out. I
02:16:56 was over at Rodney's and they'd just stop over, what's up,
02:16:59 this, that. Other than that, I was never -- I didn't go to
02:17:02 their house and hang out if that's -- none of that.

02:17:04 **Q.** Okay, but once Jen and Vickie became friends -- I'm

02:17:09 sorry, strike that, I misspoke. Once Tonya and Vickie
02:17:13 became friends, would you see Tonya around your place at
02:17:17 all?

02:17:17 **A.** Yeah. I'd show up from work, Tonya would be there
02:17:20 or she'd be going home or in between or on the weekends.
02:17:23 My wife -- like the lady, I forget her name again.

02:17:26 **Q.** Ms. Bianco?

02:17:27 **A.** Ms. Bianco was saying, they worked together at a
02:17:30 landscaping deal, and that was a big problem with me and my
02:17:33 wife when we were first getting together because me and
02:17:35 Tonya did not get along.

02:17:37 **Q.** Why's that?

02:17:37 **A.** Tonya -- I didn't like the way Tonya treated her
02:17:40 children. I didn't like the way her kids had -- she'd drop
02:17:44 her kids anywhere, she -- more important to go do what she
02:17:47 wanted, and we didn't get along, we didn't see eye to eye
02:17:49 that way, and she didn't like knowing that I didn't like
02:17:51 the way she raised her kids or did what she did with her
02:17:55 kids.

02:17:55 **Q.** Did you ever openly tell Tonya --

02:17:58 **A.** Tell her flat out that I didn't like her, yes.

02:18:00 **Q.** Would you guys get into I don't want to say
02:18:02 arguments, but would there be words exchanged between you?

02:18:07 **A.** Not after that because I just like I told you, I
02:18:09 don't like the way you treat your kids, I don't like the

02:18:11 way you live, I don't like the way my wife and you are
02:18:14 related, if you're cousins or what, you work with her,
02:18:18 that's her business, not mine, I don't have to be your
02:18:19 friend, and I tell my wife, my girlfriend back then, that I
02:18:22 don't like you and I don't want to be your friend. She's
02:18:24 your friend.

02:18:25 **Q.** And she was friends with Vickie and still friends
02:18:31 with Vickie when you killed Vickie.

02:18:33 **A.** No.

02:18:34 **Q.** No?

02:18:34 **A.** Not that I know of. They had had a big blowup,
02:18:38 fight back when Vickie and me moved into that trailer two
02:18:42 years before that, and they'd see each out, but they
02:18:46 weren't buddy buddy any more because they still had mutual
02:18:50 friends.

02:18:50 THE COURT: Stop right there. Good time to
02:18:53 take a ten-minute break, 2:30, and I'm going to go
02:18:57 until four, okay? Court's in ten-minute recess.

02:19:08 (Whereupon, there was a recess.)

02:30:45 THE COURT: Just so that we, the attorneys and
02:33:52 the Court are, the understanding we're sending Mr.
02:33:55 Bohrer and his attorney today, they're not going to
02:33:58 testify, right?

02:34:00 MS. PEEBLES: That's correct.

02:34:01 THE COURT: Our plan is Mr. Breckenridge after

02:34:03 Mr. Steen, and if Mr. Breckenridge is not done, we'll
02:34:06 bring him back first thing Wednesday morning, and then
02:34:11 Bohrer, and then we'll go from there, right?
02:34:15 MS. PEEBLES: Correct, correct.
02:34:16 THE COURT: And of course Judge Fahey's the
02:34:17 unknown because we'll take him as he's available.
02:34:20 MS. PEEBLES: Yes.
02:34:21 THE COURT: Is that your understanding too,
02:34:21 Mr. Oakes?
02:34:22 MR. OAKES: Yes.
02:34:23 THE COURT: So Mr. Bohrer is out for today.
02:34:24 Okay, would you get Mr. Steen please?
(Whereupon, there was a pause in the
proceeding).
02:35:03 THE COURT: Mr. Steen, you're back on the
02:35:04 bench, we're back on the record, and you're still under
02:35:08 oath, okay, sir?
02:35:08 THE WITNESS: Yes, sir.
02:35:08 THE COURT: Thank you.
02:35:09 MR. OAKES: Your Honor, could you turn on my
02:35:16 mike? Thank you.
02:35:21 **Q.** Mr. Steen, you indicated that you know Megan Shaw?
02:35:24 **A.** Yep.
02:35:25 **Q.** And did you know Megan through her husband Rubin
02:35:29 Sidney Shaw, is that how you met her?

02:35:32 **A.** Yeah. It was actually through Rubin's sister I actually met her first because she was actually a babysitter for Rubin's brother and I met her over at Rubin's sister's house.

02:35:42 **Q.** Okay.

02:35:43 **A.** And then her and Rubin got together and yeah, mostly through Rubin.

02:35:47 **Q.** Now I'm not sure if I understood you correctly. Is there some sort of familial family relationship between Tonya Priest and Megan Shaw? Are they related through blood or marriage?

02:35:58 **A.** No, just they're both married to the same man.

02:36:01 **Q.** Okay.

02:36:02 **A.** She's married to Rubin, Tonya was married to Rubin, that's all I know of.

02:36:05 **Q.** Now, I believe Ms. Bianco asked you about the term or the name Vicious Circle. You have heard of that?

02:36:12 **A.** Yep.

02:36:13 **Q.** What is it?

02:36:13 **A.** It's a bike group, bike club, group, whatever you want to --

02:36:19 **Q.** And I believe you indicated to Ms. Bianco you attended a couple functions for the --

02:36:24 **A.** Cold parties, yeah, I didn't know they were Vicious Circle functions till I got there, but yeah, they were

02:36:30 there.

02:36:30 **Q.** How did you hear about those parties or get
02:36:33 togethers?

02:36:33 **A.** A girl I was going out with.

02:36:35 **Q.** Were you a member of Vicious Circle?

02:36:37 **A.** Never.

02:36:37 **Q.** Did you ever ride motorcycles with them?

02:36:40 **A.** I've ridden bikes with a lot of people but I was
02:36:43 never in the club.

02:36:44 **Q.** Now, you had indicated to Ms. Bianco that over the
02:36:59 course of years since Heidi Allen's disappearance, you've
02:37:02 heard lots of stories in the community?

02:37:05 **A.** Most of the stories were back when this first
02:37:08 happened. That's -- everybody had their own opinion, their
02:37:10 own story of what happened, how it happened, where it
02:37:12 happened, and that's -- that was -- it was bar talk, you go
02:37:17 to a bar, that's what was the big talk was back in the
02:37:20 early nineties, middle nineties, and then after a while it
02:37:24 just everybody didn't -- it was over with, you know what I
02:37:28 mean?

02:37:28 **Q.** So during that time period would you agree there was
02:37:30 a lot of basically small town rumor and gossip about what
02:37:35 happened?

02:37:35 **A.** Sure.

02:37:36 **Q.** A lot of speculation?

02:37:38 **A.** Sure.
02:37:39 **Q.** And let me ask you, when you were a kid did you ever
02:37:42 play the game telephone?
02:37:44 **A.** Excuse me?
02:37:44 **Q.** Did you ever play the game telephone where you tell
02:37:47 a buddy something, he tells the next person?
02:37:49 MS. BIANCO: Objection to this, Your Honor,
02:37:51 playing a game telephone.
02:37:52 THE COURT: I have an idea where he's going.
02:37:54 Get to there -- get there pretty quickly.
02:37:56 **Q.** Okay.
02:37:57 **A.** No, I never heard of that, that's why you caught me
02:37:59 off guard there.
02:38:00 **Q.** No, that's fine. Mr. Steen, would you agree with
02:38:03 the idea that sometimes somebody tells a story and over
02:38:06 time it grows, it expands, becomes some sort of legend?
02:38:09 **A.** Oh, sure.
02:38:11 MS. BIANCO: Objection, Judge, the relevance
02:38:11 of somebody at some time telling a story.
02:38:13 THE COURT: If he gets to it quickly I'll
02:38:15 allow it.
02:38:16 **Q.** Would you agree with the idea that in the community
02:38:19 there's lots of stories about what happened to Heidi Allen?
02:38:22 **A.** Sure.
02:38:23 **Q.** A lot of speculation and conjecture?

02:38:26 **A.** Sure.

02:38:27 **Q.** And now that speculation and conjecture is focussed on you.

02:38:31 **A.** Exactly.

02:38:32 **Q.** Now, Mr. Steen, Ms. Bianco asked if you are convicted of murder, and you acknowledge that you are, correct?

02:38:44 **A.** Yes, sir.

02:38:45 **Q.** And that's why you're in state prison now?

02:38:47 **A.** Yes, sir.

02:38:48 **Q.** Now, on September twelfth of 2010, the day you killed Vickie and Charles Carr, you were in the hotel room up in Pulaski, correct?

02:39:00 **A.** I don't know if you call it a hotel room.

02:39:02 **Q.** Not hotel but apartment?

02:39:04 **A.** Yeah, okay.

02:39:05 **Q.** And essentially you were stuck inside the apartment, the police were outside?

02:39:10 **A.** Yes, sir.

02:39:11 **Q.** And eventually you spoke at some point with James McGraw who was an attorney at the time?

02:39:17 **A.** Yep.

02:39:18 **Q.** And then you surrendered yourself to the police, correct?

02:39:21 **A.** Yep.

02:39:21 **Q.** And then after you surrendered yourself, you actually met with a member of the Sheriff's Department and spoke with him?

02:39:29 **A.** I believe so.

02:39:31 **Q.** Do you remember speaking with a Carmen Rojek?

02:39:34 **A.** Yep.

02:39:35 **Q.** Sheriff's Department?

02:39:36 **A.** That's what I was -- yep.

02:39:38 **Q.** And at that time you told him about what had happened that day and you explained, gave your version of events, correct?

02:39:44 **A.** Pretty much, yeah.

02:39:46 **Q.** Okay, and you went to trial on that case?

02:39:50 **A.** Yes, I did.

02:39:51 **Q.** And you testified at your own trial, correct?

02:39:54 **A.** I sure did.

02:39:55 **Q.** Now, during the course of his representation, did Mr. McGraw ever talk to you about trying to enter some sort of plea deal or trying to get a better deal for your case?

02:40:06 **A.** No.

02:40:07 **Q.** Okay.

02:40:07 **A.** We were offered two different deals but we -- that wasn't acceptable.

02:40:12 **Q.** Okay, well, did you ever have a private conversation though with Mr. McGraw where he may have asked you look, do

02:40:18 you know something you can give up to get a better deal?
02:40:21 **A.** No.
02:40:21 **Q.** Never talked to him about that?
02:40:23 **A.** No.
02:40:24 **Q.** And you are now sentenced to life in prison,
02:40:31 correct?
02:40:31 **A.** Yes, sir.
02:40:32 **Q.** You realize that you are never getting out of state
02:40:36 prison, correct?
02:40:37 **A.** Yep.
02:40:38 **Q.** Do you understand that if you were involved in Heidi
02:40:42 Allen's abduction or death, you could say so right now and
02:40:47 essentially you're going to face no additional punishment.
02:40:50 **A.** Yeah. I recently went to Five Points and one of the
02:40:54 guards said that to me.
02:40:56 **Q.** My question to you though, Mr. Steen, were you
02:40:59 involved in the abduction of Heidi Allen?
02:41:01 **A.** No.
02:41:01 **Q.** Were you involved in the killing of Heidi Allen?
02:41:04 **A.** No.
02:41:04 **Q.** Were you knowingly involved in the disposal of Heidi
02:41:08 Allen?
02:41:08 **A.** No.
02:41:09 **Q.** Mr. Steen, I'm going to direct your attention back
02:41:16 to the conversation in December twenty-ninth of 2014 when

02:41:21 Mr. Moody and I met with you?

02:41:22 **A.** Yes, sir.

02:41:23 **Q.** In state prison? You made a comment at one point,
02:41:26 you pointed to the investigators and then to Mr. Moody and
02:41:30 I. Do you remember your comment?

02:41:31 **A.** Yeah.

02:41:33 **Q.** What was your comment?

02:41:35 **A.** That I trust them more than I do you.

02:41:37 **Q.** Okay, you don't like prosecutors?

02:41:39 **A.** Don't like the DA's Office at all.

02:41:41 **Q.** And in particular, you don't like the Oswego County
02:41:43 DA's Office.

02:41:44 **A.** Exactly.

02:41:45 **Q.** Be fair to say your testimony -- let me rephrase.
02:41:54 Mr. Steen, would you go out of your way to give testimony
02:41:58 if you thought it would help me?

02:41:59 **A.** No.

02:42:00 **Q.** Okay, thank you.

02:42:08 THE COURT: Give me a second, Ms. Bianco,
02:42:10 please.

02:42:11 (Whereupon, there was a pause in the
02:42:13 proceeding.).

02:42:13 THE COURT: Thank you, Ms. Bianco.

02:42:37 MS. BIANCO: We just have to switch
02:42:39 microphones.

02:42:40 THE COURT: Okay. Mr. Steen, are you all set for water, sir?

02:42:46 THE WITNESS: I can use a little more water please. Thank you.

02:42:53 RECROSS-EXAMINATION

02:42:55 BY MS. BIANCO:

02:42:55 **Q.** Mr. Steen, I believe you testified on cross-examination that Roger Breckenridge kind of was like a blow hole and just made up a lot of stories, is that right?

02:43:21 **A.** Pretty much, yep.

02:43:21 **Q.** How many other abductions has he confessed to you?

02:43:26 **A.** None.

02:43:26 **Q.** How many other murders has he confessed to you?

02:43:29 **A.** None. He never confessed to abducting Heidi neither.

02:43:38 **Q.** He only told you about --

02:43:40 **A.** That he took a van, he got rid of the van.

02:43:42 **Q.** With what in it?

02:43:43 **A.** With Heidi's remains in it. But other than that, he never said he took her or did anything to her. He just removed the van is all he said.

02:43:52 **Q.** With her body.

02:43:53 **A.** Yeah.

02:43:54 **Q.** Now, when you had these conversations with the

02:44:02 prosecutor that he was talking about in December
02:44:05 twenty-ninth, what were you told in regards to your status
02:44:09 as a suspect?

02:44:11 **A.** I wasn't.

02:44:13 **Q.** You were not a suspect?

02:44:14 **A.** I was -- this was just a trial to see who -- what
02:44:18 happened.

02:44:18 **Q.** Were you told you were --

02:44:19 **A.** I thought they were up there to charge me with this.
02:44:22 They said no, we're not here to charge you.

02:44:24 **Q.** Were you told you were exonerated?

02:44:27 **A.** Never.

02:44:28 MR. OAKES: Objection, Your Honor, beyond the
02:44:29 scope of direct or cross.

02:44:31 THE COURT: Sustained.

02:44:31 **A.** We never --

02:44:33 THE COURT: No, sustained.

02:44:34 THE WITNESS: Sorry.

02:44:35 **Q.** When you talked about on direct -- on
02:44:39 cross-examination about living with your mother, did you
02:44:44 also live on a trailer on Route 11 at any point in time?

02:44:49 **A.** Trailer, Route 11.

02:44:51 **Q.** Near Rice Road.

02:44:52 **A.** Me?

02:44:55 **Q.** Yes.

02:44:55 **A.** No.

02:44:57 **Q.** Now you -- you testified on cross-examination that you will never be getting out of prison, is that right?

02:45:13 **A.** Pretty much.

02:45:13 **Q.** Did you ever have a phone conversation with Jay McGillicuddy where you spoke about coming out after ten years?

02:45:23 **A.** Yeah. That's what my lawyer told me we can get it down to.

02:45:26 MR. OAKES: Objection.

02:45:27 THE COURT: Hold on, Mr. Steen. What's your objection, sir?

02:45:29 MR. OAKES: Well, foundation. I believe that conversation if it occurred took place before his conviction and sentence which is different.

02:45:36 THE COURT: I'll allow the question, only that question. And your answer is what did he say, sir?

02:45:41 THE WITNESS: That's what my lawyer was telling me we were trying to get was a ten-year deal.

02:45:45 **Q.** And you're currently housed in protective custody, is that correct?

02:45:49 **A.** No.

02:45:50 **Q.** Were --

02:45:50 **A.** Never been in PC.

02:45:52 **Q.** Never. What would happen to you if word got out

02:45:58 that you had information that you didn't tell and kept an
02:46:03 innocent man in prison for twenty years? What do you think
02:46:05 would happen to you?

02:46:06 MR. OAKES: Objection, Your Honor.

02:46:08 THE COURT: Don't answer the question. What's
02:46:10 your objection?

02:46:11 MR. OAKES: Beyond the scope of cross.

02:46:14 THE COURT: Sustained.

02:46:14 MS. PEEBLES: May we approach, Your Honor?

02:46:16 THE COURT: Sure.

02:46:22 (Whereupon, there was an off the record
02:46:23 discussion).

02:47:22 **Q.** Are you familiar to what happens to people who
02:47:25 snitch in prison?

02:47:26 **A.** Oh, yeah.

02:47:26 **Q.** What happens to them?

02:47:28 **A.** All depends. Multiple things can happen.

02:47:31 **Q.** Like what?

02:47:32 **A.** Back in the day it was different than now days. Now
02:47:35 there is PC and they just sign in when they snitch.

02:47:39 **Q.** So you testified on cross-examination that you would
02:47:44 never be a snitch, correct?

02:47:45 **A.** Never.

02:47:47 **Q.** And you also testified that you would not disclose
02:47:54 any information if you had some information about somebody

02:47:57 else being involved in this, is that correct?

02:48:00 **A.** Pretty much.

02:48:03 **Q.** What would happen -- what do you think would happen
02:48:07 to you if people in the jail found out you had information
02:48:12 but didn't disclose it and an innocent man was kept in
02:48:14 prison?

02:48:15 **A.** I don't have that information though so I'm not
02:48:18 worried about that.

02:48:19 **Q.** You're only worried about being perceived as a
02:48:22 snitch.

02:48:22 **A.** Pretty much.

02:48:24 **Q.** 'Cause that's the last thing --

02:48:26 **A.** I had nothing I can tell you, ma'am, about that will
02:48:28 save that man over there. Nothing. Nothing.

02:48:33 **Q.** But yet you told information about Roger
02:48:35 Breckenridge.

02:48:37 **A.** What Roger did, he picked it up, okay, just like he
02:48:40 said in the paper, and I didn't say anything about Roger
02:48:42 until after he put it out there himself. He told the paper
02:48:45 that himself.

02:48:47 **Q.** Okay. Thank you, sir.

02:48:52 THE COURT: Mr. Oakes?

02:48:53 MR. OAKES: No, thank you, Your Honor.

02:48:54 THE COURT: Okay, you might as well keep that
02:48:56 on, Ms. Bianco.

02:49:12 MR. MILES: Judge, can we approach?

02:49:15 THE COURT: Yes.

02:49:16 (Whereupon, there was an off the record
02:49:16 discussion).

02:49:31 THE COURT: We're done with Mr. Steen. Ms.
02:50:14 Bianco, your next witness?

02:50:17 MS. BIANCO: Roger Breckenridge please.

02:50:38 THE COURT: Please stand sir.

02:50:39 THE CLERK: Raise your right hand best you
02:50:42 can, place your left on the Bible.

ROGER BRECKENRIDGE, Called as a witness, having been duly sworn, was examined and testified as
02:50:53 follows:

02:50:53 THE CLERK: Please state your name for the
02:50:55 record.

02:50:55 THE WITNESS: Roger Breckenridge.

02:50:57 THE CLERK: Spell your last name.

02:50:58 THE WITNESS: B-R-E-C-K-E-N-R-I-D-G-E.

02:51:03 THE CLERK: Have a seat please.

02:51:06 THE COURT: Mr. Breckenridge, a couple things.
02:51:09 You seem to be very soft spoken. This is being
02:51:11 recorded. The people also have to hear you. The
02:51:13 acoustics in this building or in this room are not very
02:51:17 good. I want you to speak loudly enough so the back
02:51:19 wall can hear you, okay, sir?

02:51:21 THE WITNESS: Okay.

02:51:21 THE COURT: A little bit louder, sir.

02:51:22 THE WITNESS: Okay.

02:51:23 THE COURT: I'm also going to ask you whether or not you consent to having your testimony video and audio taped.

02:51:29 THE WITNESS: It don't matter.

02:51:31 THE COURT: I need a yes or no.

02:51:32 THE WITNESS: Yes, go ahead.

DIRECT EXAMINATION

02:51:42 BY MS. BIANCO:

02:51:42 **Q.** Good afternoon, Mr. Breckenridge.

02:51:44 THE COURT: Also, Mr. Breckenridge, all responses have to be verbal, okay? You nodded your head in acknowledgement Ms. Bianco saying hello to you, but I need to make sure you respond verbally, okay, sir?

02:51:55 **A.** Good afternoon.

02:52:03 **Q.** Mr. Breckenridge, how long have you been in the courthouse today?

02:52:09 **A.** Just a couple minutes.

02:52:11 **Q.** A couple minutes?

02:52:12 **A.** Yeah.

02:52:13 **Q.** Did you hear any of the testimony from Mr. Steen from where you were sitting?

02:52:19 **A.** No, ma'am.
02:52:20 **Q.** Do you know Gary Thibodeau?
02:52:24 **A.** No, I don't.
02:52:25 **Q.** How about Richard Thibodeau?
02:52:27 **A.** No, I don't.
02:52:29 **Q.** Now presently what are you convicted of?
02:52:35 **A.** I'm convicted of stealing some junk metal.
02:52:39 **Q.** In the past have you been convicted of giving a
02:52:42 false written statement?
02:52:43 **A.** No.
02:52:45 **Q.** Are you certain of that?
02:52:47 **A.** Oh, yeah, I did, back in the day of Josh Green.
02:52:54 **Q.** What happened with that, the false statement?
02:52:57 **A.** Nothing. I got it dropped down to -- I dealt with
02:53:06 breaking an order of protection and driving without a
02:53:08 license.
02:53:08 **Q.** Did you get six months in jail for that?
02:53:10 **A.** Yeah, but I only got -- I got it down from six
02:53:14 month to driving without a license and breaking order of
02:53:18 protections.
02:53:18 **Q.** What did you lie about?
02:53:20 **A.** About him having selling me marijuana.
02:53:24 THE COURT: Who is him?
02:53:25 **Q.** Who is him?
02:53:26 **A.** Joey Green.

02:53:28 **Q.** And right now is there a warrant out for you for lying to the police about your identity in Rome, New York?

02:53:37 **A.** Yes, ma'am.

02:53:37 MR. OAKES: Objection, Your Honor.

02:53:38 THE COURT: What's your objection?

02:53:39 MR. OAKES: Well, if there is a warrant, it's irrelevant, one, and if there's a warrant, it's just an accusation.

02:53:48 THE COURT: I don't -- I don't see the relevance. My concern is you're impeaching your own witness which you're not entitled to do. So I'm going to sustain.

02:53:57 **Q.** Have you ever sold marijuana?

02:53:59 **A.** No, ma'am.

02:54:01 **Q.** So in 1992 you have never sold marijuana in Oswego?

02:54:07 **A.** No.

02:54:08 **Q.** Town of Hastings?

02:54:11 **A.** No.

02:54:12 **Q.** And you're certain of that.

02:54:13 **A.** Yeah.

02:54:14 MR. OAKES: Objection, Your Honor. Getting to impeaching.

02:54:18 THE COURT: I'm going to sustain the objection.

02:54:19 **Q.** Before going to prison, where were you living?

02:54:23 **A.** 89 Dewey Road.

02:54:26 **Q.** And where is that?

02:54:27 **A.** Right in Mexico.

02:54:29 **Q.** In the county of?

02:54:30 **A.** Oswego, Oswego County.

02:54:33 **Q.** How long have you lived in Oswego?

02:54:35 **A.** All my life.

02:54:36 **Q.** Were you ever married before?

02:54:39 **A.** Yep.

02:54:40 **Q.** Who was your first wife?

02:54:42 **A.** Tracey Breckenridge.

02:54:44 **Q.** And when did you marry Tracey?

02:54:46 **A.** Eighty-six.

02:54:48 **Q.** And how long --

02:54:49 **A.** About eighty-six.

02:54:50 **Q.** How long were you married?

02:54:52 **A.** About ten, fifteen years.

02:54:54 **Q.** Ten or fifteen years?

02:54:56 **A.** Yeah, before we got divorced.

02:54:58 **Q.** Did you ever separate her -- with her before the ten
02:55:02 or fifteen years before you were divorced?

02:55:04 **A.** Yeah, yep.

02:55:07 **Q.** Were you ever dating a person by the name of
02:55:11 Jennifer Wescott?

02:55:12 **A.** Yes, ma'am.

02:55:12 **Q.** Okay, and when did you date Jennifer?

02:55:16 **A.** I got with Jennifer Wescott February seventeenth on her birthday, her eighteenth birthday.

02:55:22 **Q.** And what year was that?

02:55:24 **A.** 1995.

02:55:26 **Q.** Did you know Jennifer Westcott before 1995?

02:55:29 **A.** The end of ninety-four.

02:55:32 **Q.** And was she a babysitter for you?

02:55:35 **A.** Yes, ma'am.

02:55:36 **Q.** Is it your testimony that in April of 1994 you were not dating Jennifer Wescott?

02:55:49 **A.** No, ma'am.

02:55:50 **Q.** Did you know her at that time?

02:55:53 **A.** No, ma'am.

02:55:54 **Q.** Do you know who James Steen is?

02:55:57 **A.** Yeah.

02:55:58 **Q.** Who is he to you?

02:55:59 **A.** He was just a friend back in the day.

02:56:02 **Q.** In 1994 did you know him?

02:56:05 **A.** No. Well, I knew him, but I wasn't hanging out with him or nothing like that back in ninety-four.

02:56:12 **Q.** Did you go to school with him?

02:56:13 **A.** Yes, I did.

02:56:14 **Q.** Did you later become friends?

02:56:19 **A.** Yep.

02:56:19 Q. And when was that?

02:56:20 A. It was -- it was like ninety-six. It was after I met Jennifer he started coming around.

02:56:30 Q. So you -- did you ever junk cars for Murtaugh's?

02:56:36 A. I worked for Murtaugh's but I never junked 'em.

02:56:39 Q. How long did you work for Murtaugh's?

02:56:41 A. Just for a couple years.

02:56:42 Q. And what years were they?

02:56:44 A. Ninety-four, ninety-five.

02:56:45 Q. Were you hanging out with James Steen in 1994?

02:56:54 A. No, ma'am.

02:56:55 Q. Not at all?

02:56:55 A. No.

02:56:57 Q. Did you ever use drugs with James Steen?

02:57:00 MR. OAKES: Objection.

02:57:01 A. Yeah.

02:57:01 THE COURT: Stop. Hold on.

02:57:03 MR. OAKES: Leading. Objection, leading. Foundation.

02:57:06 THE COURT: Sustained.

02:57:07 Q. Have you ever used drugs?

02:57:11 A. Yep.

02:57:12 Q. What type of drugs?

02:57:13 A. Marijuana.

02:57:14 Q. Anything else?

02:57:15 **A.** No.

02:57:16 **Q.** Have you ever used drugs with a person named James Steen?

02:57:20 **A.** Yeah.

02:57:21 **Q.** When was that?

02:57:22 **A.** After I met him in ninety-six on and off we'd meet him, smoke.

02:57:32 **Q.** How often would you see him?

02:57:34 **A.** Once a week back then.

02:57:37 **Q.** Did you talk --

02:57:38 **A.** Sometimes more.

02:57:40 **Q.** Did you talk to him a lot on the phone?

02:57:43 **A.** Not really on the phone. On the CB because we had CBs back then.

02:57:49 **Q.** Did you talk to him on the CB?

02:57:51 **A.** Yep.

02:57:51 **Q.** Did you ever talk to James Steen about where Heidi Allen's remains were?

02:57:59 **A.** No, ma'am.

02:58:01 MR. OAKES: Objection. Leading and foundation.

02:58:04 THE COURT: I'll allow it.

02:58:06 **Q.** Did you ever talk to James Steen about a van that Heidi Allen may have been abducted in?

02:58:16 **A.** No, ma'am.

02:58:17 **Q.** Were you ever asked the question by the police or the prosecutors recently? You were interviewed by the police on December thirtieth, correct?

02:58:36 **A.** Yeah.

02:58:37 **Q.** Of 2014, correct?

02:58:40 **A.** Um hum.

02:58:40 **Q.** And were you ever asked if you made any statements to James Steen about Heidi Allen's remains?

02:58:48 MR. OAKES: Objection, Your Honor, relevance.

02:58:51 THE COURT: No, I think it's relevant. It's leading but I think it's relevant.

02:58:54 **A.** What was that now?

02:58:56 **Q.** Were you ever asked a question by the prosecutors or the investigators in December of 2014 about making statements to James Steen about him hauling Heidi Allen's remains to Canada. Were you ever asked about that?

02:59:16 **A.** Yes, I was.

02:59:17 **Q.** Okay, and what did you say?

02:59:18 **A.** No, I don't know nothing about none of it I told 'em.

02:59:22 **Q.** I want to ask you some questions about Rich Murtaugh.

02:59:28 **A.** Go ahead.

02:59:29 **Q.** Is he a friend of yours?

02:59:30 **A.** Yes, he is.

02:59:31 **Q.** How long have you known him?

02:59:32 **A.** I've known him since ninety-four.

02:59:35 **Q.** And was he working at the same facility as you, Murtaugh's junk yard?

02:59:41 **A.** Yeah, he owns it.

02:59:42 **Q.** And in April of 1994, were you working there at Murtaugh's junkyard?

02:59:53 MR. OAKES: Objection.

02:59:53 **A.** No.

02:59:55 MR. OAKES: Leading.

02:59:56 THE COURT: I'll take it as foundational. But attorneys please approach.

03:00:37 (Whereupon, there was an off the record discussion at the bench.)

03:00:40 **Q.** When did you start working at Murtaugh's junkyard?

03:00:44 **A.** It was like the end of -- end of ninety-four I started helping him out because he had a race car.

03:00:52 **Q.** In April of 1994, did you have a telephone conversation with Richard Murtaugh?

03:01:04 **A.** No.

03:01:05 **Q.** You never spoke to him by telephone in April of 1994?

03:01:09 **A.** Nope.

03:01:11 **Q.** Are you familiar with the area of Fernwood?

03:01:16 **A.** Fernwood?

03:01:17 **Q.** Yes.

03:01:17 **A.** Not really.

03:01:19 **Q.** Have you ever picked up any vehicles in Fernwood for Murtaugh?

03:01:25 **A.** No, not me.

03:01:26 **Q.** Have you ever picked up any vans as part of your duties for Murtaugh?

03:01:35 **A.** No.

03:01:36 **Q.** Never once.

03:01:37 **A.** No.

03:01:38 **Q.** When you were employed with Murtaugh's, did you ever have an occasion to travel?

03:01:50 **A.** No. I mean travel, we travel, I went to different junk yards with John and junked, junked a car, junked the lots out.

03:02:01 **Q.** Where were those junk yards?

03:02:02 **A.** One was out in Syracuse.

03:02:06 **Q.** Were any out of the country?

03:02:08 **A.** No.

03:02:09 **Q.** Like Canada.

03:02:09 **A.** No, never been to Canada my whole life.

03:02:15 **Q.** And is it your testimony then with -- how many vans do you think you scrapped over the years?

03:02:24 **A.** One, one van. The rest was just cars, trucks and stuff like that, tractors, junk metal.

03:02:31 **Q.** And when was that van scrapped?

03:02:34 **A.** We took that, me and Murtaugh took the van like a month after -- after the stuff happened with Thibodeau.

03:02:40 **Q.** And where did you take the van from?

03:02:42 **A.** Thibodeau's house, yard.

03:02:44 **Q.** Okay, who gave you permission to take the van?

03:02:47 **A.** Nobody.

03:02:48 **Q.** So how did you get permission to take the van?

03:02:52 **A.** We didn't. We just took it.

03:02:54 **Q.** When you say took, what do you mean?

03:02:56 **A.** We just scrapped it. We just went on the property and took it without permission. That's why I'm in prison now, a couple tractors.

03:03:07 **Q.** I want to ask you some questions about Michael Bohrer. Do you know him?

03:03:12 **A.** I met him once and he was too -- too much of a bug out for me to hang out with and that was that. I never hung out with him after that.

03:03:22 **Q.** In January fifth, 2015, were you visited at the prison you're in by Richard Haumann and Frank Sardino?

03:03:33 **A.** Yeah.

03:03:33 **Q.** What did you tell them about your knowledge of Michael Bohrer?

03:03:38 **A.** What I tell them? I told them back in the day we hung out. I talked to him -- I called up Tom Martin and

03:03:47 asked him if he friggin' knew somebody could junk a couple
03:03:52 vehicles, and he got Michael Bohrer, he had a black pickup
03:03:55 truck with a trailer, and we went and junked the cars that
03:03:59 day, right up the road from the jail, and that was that, I
03:04:03 never talked to Michael Bohrer after that.

03:04:05 **Q.** What did you tell them the year that was?

03:04:08 **A.** It was around ninety-nine.

03:04:13 **Q.** Is it your testimony that you never said 1994?

03:04:18 **A.** No, never said ninety-four with him.

03:04:22 **Q.** On June twenty-third, 2014, did you give a
03:04:28 videotaped --

03:04:28 MR. OAKES: Objection.

03:04:29 THE COURT: Let's hear the question first.
03:04:31 Don't answer the question. Ask the question.

03:04:32 **Q.** Did you give a videotaped interview with a John
03:04:36 O'Brien from the Post-Standard?

03:04:38 **A.** Yes, ma'am.

03:04:39 THE COURT: That's foundational, that's fine.

03:04:41 MR. OAKES: Yep, that's all right.

03:04:42 **Q.** And where were you incarcerated at the time?

03:04:44 **A.** Mohawk.

03:04:45 **Q.** Okay, when Mr. -- did Mr. O'Brien ask you if you
03:04:50 knew Michael Bohrer?

03:04:52 **A.** Yeah.

03:04:52 **Q.** And what did you say?

03:04:54 MR. OAKES: Objection.

03:04:55 **A.** I told him --

03:04:56 THE COURT: Stop, stop, no, stop, stop. I'm
03:04:58 sorry, I apologize. It's not a leading question. I'll
03:05:01 allow the question.

03:05:02 MR. OAKES: I believe she's impeaching her own
03:05:04 witness, Your Honor.

03:05:05 THE COURT: Excuse me?

03:05:06 MR. OAKES: I believe she's impeaching her own
03:05:08 witness.

03:05:08 THE COURT: I'll hear the response and then --

MR. OAKES: Okay.

03:05:10 THE COURT: So ask the question again please.

03:05:12 **Q.** What did you tell Mr. O'Brien on that videotaped
03:05:17 interview about Michael Bohrer and your knowledge of him?

03:05:21 **A.** The same thing I told everybody about him.
03:05:24 Everybody that comes ask me about him, I say the same
03:05:27 thing.

03:05:28 **Q.** Did you say anything or what did you say with
03:05:32 regards to 1994 about Michael Bohrer?

03:05:34 **A.** I don't know. I didn't know him back in
03:05:36 ninety-four.

03:05:38 **Q.** Are you saying you don't know what you said or you
03:05:41 don't know what?

03:05:41 **A.** I'd never met -- I never knew Michael Bohrer back in

03:05:45 ninety-four, never. I never -- I didn't know who he was.

03:05:49 **Q.** Were you asked what your relationship was with
03:05:54 Michael Bohrer by Mr. O'Brien?

03:05:56 **A.** No. He never asked me that. I know there was a lot
03:06:04 of lies from him when he come up, I know that, the
03:06:09 Post-Standard had a lot of lies.

03:06:12 **Q.** And these lies, would they have been captured on
03:06:15 videotape?

03:06:17 **A.** I don't know if it was or not.

03:06:19 **Q.** Would something refresh your recollection about
03:06:21 seeing the videotape and you can explain what the lies
03:06:24 were?

03:06:25 THE COURT: Trying to impeach your witness.
03:06:29 We've had this conversation. We've had it with Mr.
03:06:32 Steen and had it again with Mr. Breckenridge. He is
03:06:38 your witness. You are not allowed to impeach your own
03:06:40 witness, okay, Ms. --

03:06:44 MS. BIANCO: Okay, Your Honor.

03:06:45 THE COURT: Thank you.

03:06:46 **Q.** Were you interviewed by Investigator Pietroski in
03:06:50 this case?

03:06:50 **A.** No.

03:06:52 **Q.** Did anyone from the Oswego County Sheriff's
03:06:57 Department come to speak with you about the disappearance
03:07:01 of Heidi Allen?

03:07:02 **A.** Yes.

03:07:02 **Q.** Okay, do you remember when that was?

03:07:07 **A.** The first time was I was in Elmira when two
03:07:15 investigators come talk to me about it.

03:07:17 **Q.** Did you give a statement?

03:07:19 **A.** Yeah.

03:07:20 **Q.** What did you tell them regarding Mike Bohrer?

03:07:26 **A.** Same thing I have been telling you about Michael
03:07:29 Bohrer. I didn't ever knew him, I didn't know who he was
03:07:31 back in ninety-four.

03:07:33 **Q.** Did you tell them anything about a computer shop?

03:07:40 **A.** That he had a computer shop on sixty-nine, that's --
03:07:45 that's about it, that's all I told them.

03:07:48 **Q.** Did you tell them if you had ever been there?

03:07:51 **A.** No. I never was there. Drove by it a lot but never
03:07:58 stopped in there.

03:07:58 **Q.** Do you know what the name of the store was?

03:08:03 **A.** Nope. I don't know how to read and write very good
03:08:06 so I wouldn't even known.

03:08:08 **Q.** Do you know a person named Carl Robinson?

03:08:13 **A.** No, I don't.

03:08:14 **Q.** In 2002 or 2003 --

03:08:34 MR. OAKES: Your Honor, I'm just seeking
03:08:37 clarification. Is that between 2002 and 2003 or is she
03:08:40 changing it from 2002 to 2003?

03:08:43 THE COURT: I interpret it between 2002, 2003.

03:08:46 MS. BIANCO: That's what I'm trying to get at.

03:08:48 MR. OAKES: Okay, I just want to be clear. 03:08:50 Thank you.

03:08:51 **Q.** Were you -- who were you hanging around with at that 03:08:56 time?

03:08:56 **A.** 2002 and two-thousand --

03:08:59 **Q.** Um hum.

03:09:00 **A.** I don't -- a bunch of people, you know, people that 03:09:06 used to came hang out, Jay Steen, Paul Huggins, people like 03:09:13 that would come over.

03:09:15 **Q.** Who were you dating at the time?

03:09:17 **A.** Jennifer Wescott on and off back then. A lot of 03:09:21 stuff was going on between me and her back around that 03:09:25 area, around that time. I was just getting out of jail, 03:09:31 six months.

03:09:32 **Q.** Were you using drugs at that time?

03:09:34 **A.** Yeah.

03:09:35 **Q.** What type of drugs?

03:09:36 **A.** Marijuana.

03:09:37 **Q.** And where would you get the marijuana from?

03:09:40 **A.** All kinds of people. Not just one person, 03:09:47 whatever who was around I got it.

03:09:48 **Q.** Well, can you name some of these people?

03:09:51 **A.** I plead the Fifth Amendment on that. I don't need

03:09:54 to name none of the people I bought weed from. That's
03:09:58 nothing to do with this.

03:09:59 MS. BIANCO: Your Honor, I'd like to treat the
03:10:00 witness as hostile.

03:10:01 THE COURT: First of all I'd like to know what
03:10:04 the relevance is. Attorneys approach.

03:10:27 (Whereupon, there was an off the record
03:17:43 discussion at the bench.)

03:17:43 THE COURT: Okay, go ahead.

03:17:44 **Q.** In 1994 -- let me strike that. Were you buying
03:17:54 marijuana from Michael Bohrer in late 2002, early 2003 at
03:18:00 his computer shop?

03:18:01 **A.** No, ma'am.

03:18:02 **Q.** In 1994, where did your mother live?

03:18:07 **A.** In ninety-four?

03:18:10 **Q.** Yes.

03:18:10 **A.** I'm not really sure where my mom lived back then.

03:18:13 **Q.** Did she live in a blue house?

03:18:16 **A.** I'm not really sure.

03:18:18 **Q.** Do you know -- are you familiar with the D&W
03:18:22 Convenience Store?

03:18:23 **A.** Yeah.

03:18:24 **Q.** How close was that to your mom's house where she
03:18:27 lived?

03:18:28 **A.** Mom lived -- my mom had to live around Parish then

03:18:35 in -- so that would have been twenty-five miles away,
03:18:40 thirty miles.

03:18:41 **Q.** Have you ever been to the D&W Convenience Store?

03:18:45 **A.** I started going to that store like ninety-eight,
03:18:52 ninety-nine I started to go into that store.

03:18:55 **Q.** Do you know, or excuse me, did you know Heidi Allen?

03:18:59 **A.** No, ma'am.

03:19:00 **Q.** Did you know anything about her?

03:19:03 **A.** No, ma'am.

03:19:04 **Q.** When you were interviewed by the police, did you say
03:19:08 anything about her?

03:19:09 **A.** No, ma'am.

03:19:11 **Q.** And you're certain of that?

03:19:12 **A.** Yeah, ma'am.

03:19:14 **Q.** You did not know any people who knew her?

03:19:17 **A.** No, ma'am.

03:19:18 **Q.** I want to ask --

03:19:23 THE COURT: Ms. Bianco, for my own
03:19:25 clarification, when interviewed by the police, what day
03:19:28 was the interview? Are you talking about all the
03:19:30 different interviews? Are you talking about one, the
03:19:32 most recently?

03:19:33 MS. BIANCO: Yes, I am, Judge.

03:19:37 THE COURT: Thank you.

03:19:39 MR. OAKES: Do we have a date for that?

03:19:41 MS. BIANCO: Yes.

03:19:41 MR. OAKES: Okay, I'm sorry.

03:19:42 **Q.** March nineteenth, 2013, you were interviewed?

03:19:48 **A.** Yeah.

03:19:49 **Q.** Did you give a written statement?

03:19:51 **A.** Yeah. I was in Elmira.

03:19:54 **Q.** Do you remember what you said in that written
03:19:57 statement?

03:19:57 **A.** Not really. I was all stressed out, the first time
03:20:00 ever going to prison. Ask the cops. I was stressed out
03:20:04 bad back then.

03:20:05 **Q.** Would reviewing your affidavit refresh your
03:20:09 recollection about what you told the police?

03:20:11 **A.** I don't remember. Like I said, I was stressed out
03:20:15 bad back then, really, really stressed out.

03:20:19 **Q.** Would you like to review your affidavit to see what
03:20:22 you said?

03:20:22 **A.** If you want.

03:20:23 MR. OAKES: Objection, Your Honor. I object
03:20:25 to this line of questioning 'cause it seems like
03:20:27 counsel's trying to impeach him on a prior inconsistent
03:20:32 statement. She's asking him questions, giving his
03:20:33 testimony, she's stuck with it, he's her witness.

03:20:35 THE COURT: He did say he doesn't remember so
03:20:38 you can't refresh his recollection. I'm going to

03:20:40 sustain it based on the document not refreshing his
03:20:44 recollection based on his response.

03:20:49 **Q.** Were you telling the truth when you met with the
03:20:55 police?

03:20:55 **A.** Yeah. I never -- I have been dealing with the
03:21:01 Oswego County Sheriff's for my whole life and I've never
03:21:04 been -- I have been pulled over and I have never lied to
03:21:07 them about nothing.

03:21:08 **Q.** Except the false written statement that you gave?

03:21:12 **A.** Yeah.

03:21:12 MR. OAKES: Objection.

03:21:14 **A.** Why do you keep bringing that up?

03:21:16 THE COURT: Stop, Mr. Breckenridge.
03:21:18 Sustained.

03:21:34 **Q.** Are you familiar with the area of Rice Road?

03:21:36 **A.** Yeah. I used to -- I used to drive up and down it a
03:21:41 lot. People said -- they said I lived on there. I never
03:21:44 lived on Rice Road in my whole life, never. Never knew
03:21:48 anybody that lived on Rice Road.

03:21:50 **Q.** What about Jennifer Wescott?

03:21:53 **A.** She -- she never lived on Rice Road either.

03:21:57 **Q.** Do you remember speaking with John O'Brien from the
03:22:00 Post-Standard on June twenty-third, 2014?

03:22:03 **A.** Yeah.

03:22:04 **Q.** Do you remember what you said to him about Jennifer

03:22:08 Wescott and Rice Road?

03:22:10 **A.** That never lived on Rice Road. I told him that.

03:22:14 **Q.** And you're certain of that.

03:22:16 **A.** Yeah.

03:22:17 **Q.** Have you ever met a woman named Deb Vecchio?

03:22:25 **A.** No, ma'am.

03:22:26 **Q.** Have you ever been interrogated by the police about
03:22:34 the disappearance of Heidi Allen in 1995?

03:22:39 **A.** No.

03:22:40 MR. OAKES: Objection as to characterization,
03:22:42 Your Honor, interrogated.

03:22:44 THE COURT: I'll allow him to answer.

03:22:46 **A.** No.

03:22:46 **Q.** Had the police ever spoken to you in 1995 about the
03:22:50 disappearance of Heidi Allen?

03:22:52 **A.** No, no. I never -- they never talked to me back
03:22:56 then about it.

03:22:57 **Q.** Has anyone spoken to you, the police, before the
03:23:02 year of 2013, about the disappearance of Heidi Allen?

03:23:07 **A.** No, ma'am.

03:23:08 **Q.** No one at all.

03:23:10 **A.** No, no cops or nothing.

03:23:13 **Q.** Do you know a person named Amanda Braley?

03:23:19 **A.** I met her through her -- her girlfriend Jennifer
03:23:26 Lumley.

03:23:26 **Q.** And do you know where she lived in the year of 2002?

03:23:32 **A.** Nope.

03:23:34 **Q.** Have you ever been to Jennifer Westcott's parents'
03:23:38 house?

03:23:38 **A.** Yeah.

03:23:40 **Q.** Did you ever have a conversation about the abduction
03:23:45 of Heidi Allen in the presence of Amanda Braley and
03:23:51 Jennifer Wescott?

03:23:52 **A.** No, ma'am. I've never talked about Heidi Allen to
03:23:57 both nobody. I didn't need to talk to them. I don't know
03:24:00 what happened to her so why would I talk about her.
03:24:03 Whoever said that's lying.

03:24:05 **Q.** You had absolutely no conversations?

03:24:08 **A.** No.

03:24:08 **Q.** About Heidi Allen.

03:24:10 **A.** No.

03:24:10 **Q.** Have you ever had a conversation about scrapping a
03:24:15 van that was used in Heidi Allen's abduction?

03:24:19 **A.** No, ma'am.

03:24:20 **Q.** Not in front of anyone?

03:24:22 **A.** Not in front of nobody.

03:24:24 **Q.** Do you know a person by the name of Chris Combs?

03:24:30 **A.** Chris Combs?

03:24:31 **Q.** Yes.

03:24:32 **A.** Yeah. That's my boss's brother.

03:24:35 **Q.** Did you ever have a conversation with Chris Combs
03:24:39 about the disappearance of Heidi Allen?

03:24:41 **A.** No, ma'am.

03:24:42 **Q.** Have you ever discussed with him where her remains
03:24:46 may be?

03:24:47 **A.** No, ma'am.

03:24:48 MR. OAKES: Objection. Asked and answered.

03:24:50 THE COURT: That's a different question. I'll
03:24:52 allow it, and he answered no.

03:24:55 **Q.** On the morning of April third, 1994, where were you?

03:25:01 **A.** I was with my brother on Paradise Road at Jeff
03:25:07 Derby's.

03:25:08 **Q.** What time did you go there?

03:25:10 **A.** At about seven, 6:45, seven o'clock in the morning.
03:25:14 You're talking about Easter morning, right?

03:25:16 **Q.** I am.

03:25:17 **A.** Yeah.

03:25:17 **Q.** And who was present at the time?

03:25:19 **A.** Hah?

03:25:21 **Q.** Who was present?

03:25:22 **A.** Who was present? What do you mean?

03:25:23 **Q.** When you went to -- with your brother to Jeff
03:25:26 Derby's, who was there?

03:25:27 **A.** Me, Larry, me and my brother Larry, Jeff Derby, this
03:25:34 other little dude named Charlie.

03:25:38 **Q.** And what did you do that morning?
03:25:40 **A.** Just hung out, visit, smoked a little bit of pot.
03:25:43 **Q.** What were you driving that morning?
03:25:45 **A.** Me and my -- my -- I was riding with my brother. He
03:25:49 had a little Ford Tempo, gray.
03:25:52 **Q.** Later that day where did you go?
03:25:56 **A.** I went back home. I was on Kenyon Road.
03:26:00 **Q.** So what time was that?
03:26:01 **A.** I got back home about nine, 9:30.
03:26:05 **Q.** So how long were you gone Easter morning in 1994
03:26:12 from your home?
03:26:13 **A.** About three, two, two and a half hours, three, three
03:26:17 hours I was gone.
03:26:18 **Q.** From 6:45 to 9:30?
03:26:20 **A.** Yeah.
03:26:21 **Q.** Did you ever see Jen Wescott that day?
03:26:27 **A.** No, ma'am.
03:26:27 **Q.** Did you have an argument with Jen Wescott in that
03:26:34 week, the week of April of 1994?
03:26:37 **A.** No, ma'am.
03:26:38 **Q.** Was any of your -- strike that. Do you know a
03:26:51 person named Grandma Breckenridge?
03:26:55 **A.** Grandma Breckenridge, that was my mom, everybody
03:26:58 called grandma.
03:27:00 **Q.** And was her house searched, are you aware of that?

03:27:06 A. No.

03:27:07 Q. Her property?

03:27:08 A. No.

03:27:09 Q. Do you know a person named Jessica Howard?

03:27:14 A. Yes. She's married to my -- my -- my daughter's --
03:27:19 my sister's son.

03:27:22 Q. Your daughter's brother or your sister's son?

03:27:26 A. My sister's son she's married to.

03:27:28 Q. Okay, nothing about your daughter.

03:27:31 A. No.

03:27:32 Q. Did you ever have a conversation in her presence
03:27:39 about what happened to Heidi Allen?

03:27:41 A. No, ma'am, never even talked to her. I don't talk
03:27:44 to her.

03:27:45 Q. Were you at family parties with her present?

03:27:51 A. Yeah.

03:27:52 Q. When was that?

03:27:53 A. I don't know. There was all kinds of parties.
03:27:57 We -- my family has all kinds of parties. I don't really
03:28:01 remember then, where or when, I don't keep track.

03:28:05 Q. Were there ever any discussions at these parties
03:28:08 about Heidi Allen?

03:28:09 A. No, ma'am, never once.

03:28:11 Q. Were there ever any discussions about her remains?

03:28:17 MR. OAKES: Objection.

03:28:18 **A.** No, ma'am.

03:28:19 MR. OAKES: Leading, Your Honor.

03:28:20 THE COURT: No, not leading, but it was
03:28:22 already asked and answered. Sustained.

03:28:25 **Q.** Do you know what year Mike Bohrer had a black pickup
03:28:48 truck?

03:28:48 **A.** I met him like ninety-eight, ninety-nine. He had a
03:28:55 black pickup truck. That was it. That's all I --

03:28:56 **Q.** I'm sorry?

03:28:56 **A.** Back in ninety-eight, ninety-nine.

03:28:59 **Q.** And how did you know that?

03:29:00 **A.** Hah?

03:29:02 **Q.** How did you know he had a black pickup truck?

03:29:04 **A.** I was -- I had him junk a couple cars with me back
03:29:07 then, I just said that to you guys a couple minutes ago,
03:29:10 and that was it. I never talked to him after that. It was
03:29:13 over. He was too bugged out of a guy for me to hang out
03:29:17 with. I never hung out with him.

03:29:25 MS. BIANCO: May I have a moment, Your Honor.

03:29:27 THE COURT: Sure.

03:29:28 (Whereupon, there was a pause in the
03:29:41 proceeding.)

03:29:41 **Q.** The van you took from Mr. Thibodeau's property,
03:29:45 remember testifying about that?

03:29:46 **A.** Yeah.

03:29:47 Q. Was that a van that was operable?

03:29:52 A. No. That thing was junk.

03:29:55 Q. So it didn't work?

03:29:56 A. No.

03:29:57 Q. And when --

03:29:57 A. Didn't have no transmission in it.

03:29:59 Q. How do you know?

03:30:00 A. Because I -- when we took it to Murtaugh's, I flopped it upside down and we flopped them up, take the converters off them.

03:30:10 Q. And when was that?

03:30:12 A. It was like a month after the -- this all went down with Thibodeaus.

03:30:17 Q. And why did you decide to go to Gary Thibodeau's house?

03:30:21 A. Just like why I -- because stupid mistakes I made. That's why I'm in prison for right now.

03:30:28 Q. What do you mean stupid mistakes?

03:30:31 A. Going to junk stuff without permission.

03:30:34 Q. And who were you with?

03:30:36 A. That's what I'm in prison for.

03:30:38 Q. Who were you with when you junked that van?

03:30:41 A. Rich Murtaugh.

03:30:42 Q. And whose idea was it to take it?

03:30:43 A. Both of ours.

03:30:47 MS. BIANCO: No further questions, Your Honor.
03:30:48 THE COURT: Thank you. Mr. Oakes, just give
03:30:53 me a few seconds.
03:30:55 MR. OAKES: Yes, sir.
03:30:56 (Whereupon, there was a pause in the
03:31:00 proceeding.)
03:31:00 THE COURT: Go ahead, sir.
03:31:03 CROSS-EXAMINATION
03:31:03 BY MR. OAKES:
03:31:04 **Q.** Good afternoon, Mr. Breckenridge.
03:31:30 **A.** Good afternoon.
03:31:31 **Q.** How old are you, Mr. Breckenridge?
03:31:34 **A.** Forty-six.
03:31:35 **Q.** And when did you get married to Tracey Breckenridge?
03:31:38 **A.** Had to be eighty-six, eighty-four, eighty-six,
03:31:42 around there.
03:31:43 **Q.** That was your first marriage?
03:31:44 **A.** Yep.
03:31:45 **Q.** Your only marriage?
03:31:46 **A.** That's it.
03:31:47 **Q.** Okay, and you have a number of children with Tracey
03:31:51 Breckenridge?
03:31:52 **A.** Yeah.
03:31:52 **Q.** How many?
03:31:54 **A.** I got seven. No, five with her. Seven all

03:31:58 together.
03:31:58 **Q.** And generally what are their ages?
03:32:01 **A.** The oldest is twenty-eight, the youngest is
03:32:05 twenty-two.
03:32:06 **Q.** So back in Easter of ninety-four the kids would have
03:32:10 been little, would still have been home?
03:32:12 **A.** Sure was, a handful.
03:32:15 **Q.** And so back in that time, again, you guys had Easter
03:32:18 at your house, you had --
03:32:20 **A.** Yes.
03:32:20 **Q.** -- Easter baskets for the kids?
03:32:22 **A.** Yeah. We had it on Kenyon Road.
03:32:24 **Q.** And I just want to be clear, Mr. Breckenridge, on
03:32:30 Easter morning of ninety-four, you said you got up around
03:32:33 6:45, seven a.m. that day?
03:32:35 **A.** Um hum.
03:32:35 **Q.** And you went over to your brother Larry's house?
03:32:38 **A.** No. My brother Larry picked me up and we went to
03:32:40 Jeff Derby's.
03:32:41 **Q.** Why did Larry pick you up?
03:32:43 **A.** Didn't have no car at the time.
03:32:44 **Q.** Did you have a license at the time?
03:32:46 **A.** Nope.
03:32:47 **Q.** So Larry was your mean of transport?
03:32:50 **A.** Yeah.

03:32:51 **Q.** What was the car he had again? Was it a Camaro you said?

03:32:55 **A.** Hah?

03:32:56 **Q.** Not a Camaro.

03:32:56 **A.** Ford Tempo.

03:32:57 **Q.** Ford Tempo. A little different. And where did your brother live at that time?

03:33:03 **A.** My brother lived on 69A in Parish.

03:33:07 **Q.** That's right in the Village of Parish, right?

03:33:09 **A.** Yeah.

03:33:09 **Q.** And did he live at that little white house, little apartment complex?

03:33:14 **A.** Yep. Next to the blue house.

03:33:19 **Q.** And you mentioned a blue house. Does that house stick out in your mind for a reason?

03:33:24 **A.** Hah?

03:33:25 **Q.** The blue house you just referenced, does that stick out in your mind for a reason?

03:33:29 **A.** Yeah. My mom used to -- my mom moved in there afterwards, you know.

03:33:33 **Q.** When you say afterwards, what are you referring to?

03:33:36 **A.** I don't know. I can't remember what year it was when she lived there. It was -- yeah, I do because I -- that's when Jacob was -- me and Jennifer were -- made Jacob.

03:33:48 **Q.** Okay, well, actually I was going to get to that. We
03:33:51 can talk about that now. At one point you were with -- in
03:33:57 a relationship with Jennifer Wescott?

03:33:59 **A.** Hah?

03:33:59 **Q.** You were in a relationship, boyfriend/girlfriend
03:34:02 with Jennifer Wescott?

03:34:03 **A.** The end of ninety-four, and I got with her in
03:34:09 ninety-five on her birthday.

03:34:09 **Q.** So toward the end of ninety-four, it was kind of
03:34:12 like you guys were flirting a little bit?

03:34:14 **A.** Yeah.

03:34:14 **Q.** But not doing anything?

03:34:15 **A.** Right.

03:34:16 **Q.** Okay, and when did she turn eighteen?

03:34:18 **A.** February seventeenth.

03:34:19 **Q.** Of which year?

03:34:21 **A.** Ninety-five.

03:34:22 **Q.** Let me ask were you waiting for her eighteenth
03:34:25 birthday for a reason?

03:34:26 **A.** No, no, I was -- just something that happened back
03:34:31 then.

03:34:31 **Q.** Okay. And do you remember her eighteenth birthday
03:34:36 for a particular reason? Did something of significance
03:34:38 happen on that day?

03:34:39 **A.** All kinds of stuff happened that day, you know.

03:34:44 That was just --

03:34:46 Q. Well, you said you had two kids, Jacob and Kristen
03:34:51 with Jen?

03:34:52 A. Yeah.

03:34:52 Q. How old's Jacob?

03:34:54 A. How old's Jacob? Jacob's nineteen now.

03:34:57 Q. Okay, and do you remember what year he was born in?

03:34:59 A. Jacob?

03:35:00 Q. Yeah.

03:35:01 A. Ninety-six.

03:35:02 Q. Ninety-six, okay. Now when you guys had Jacob, you
03:35:07 and Jen, where were you living when Jacob was a little guy,
03:35:10 well, was a baby, first year?

03:35:12 A. We were living with Jennifer's mom and dad on
03:35:15 thirty-eight.

03:35:15 Q. What township's that in?

03:35:17 A. Hastings.

03:35:18 Q. Now that spot in thirty-eight, is that basically if
03:35:22 you go from Route 11, you go thirty-eight, kind of take a
03:35:26 bend and there's railroad tracks right there?

03:35:28 A. First place after the railroad tracks.

03:35:32 Q. And her mom and dad were together at that time?

03:35:33 A. Yep.

03:35:33 Q. Is that Paul and Sharon?

03:35:34 A. Yep.

03:35:35 **Q.** Now she had two sisters that were living there at the time too, right?

03:35:38 **A.** Yes, Jessica and --

03:35:40 **Q.** Missy?

03:35:41 **A.** Missy.

03:35:42 **Q.** Okay, now, did you ever live on Rice Road with Jennifer?

03:35:50 **A.** No, ma'am. No.

03:35:53 **Q.** Come on, Roger.

03:35:55 **A.** No. Never lived on Rice Road in my whole life.

03:36:00 **Q.** Okay. Now, you talked to Ms. Bianco about going to take a vehicle from the Thibodeaus?

03:36:12 **A.** Yeah.

03:36:13 **Q.** Now I just want to be clear when you say Thibodeaus, there are two Thibodeaus. There is Gary right here and then Richard.

03:36:19 **A.** That was Gary on Kipp Road, on Kenyon Road.

03:36:24 **Q.** And you went there with Rich Murtaugh?

03:36:26 **A.** Yes.

03:36:26 **Q.** Let me ask you was Dawn Delacruz Rich's girlfriend or --

03:36:30 **A.** Yep.

03:36:33 **Q.** I guess they're not married, but they have been together forever?

03:36:34 **A.** Forever.

03:36:34 **Q.** Okay, was she with you as well?

03:36:36 **A.** Yeah.

03:36:36 **Q.** Who decided to go to Gary's place to take that van?
03:36:43 Whose idea was it?

03:36:44 **A.** It was both me and Rich's idea. We needed race car
03:36:48 tires at the time so we did it to get race car tires.

03:36:51 **Q.** And at that time if you had scrapped a van,
03:36:53 generally how much would you get for it?

03:36:54 **A.** Oh, back then probably I think we got like
03:36:57 three-hundred bucks back then for it.

03:36:59 **Q.** Now, what type of vehicle -- did you guys use a --
03:37:03 like a rollout flat back?

03:37:05 **A.** Yeah, a rollback.

03:37:06 **Q.** Rollback, there you go. And you guys went, loaded
03:37:09 up the vehicle because you said it had no tranny?

03:37:12 **A.** Yeah. Sat there for a while.

03:37:15 **Q.** Now, did you get out? Who actually hooked up the
03:37:19 van?

03:37:20 **A.** Me.

03:37:20 **Q.** Who operated the winch?

03:37:23 **A.** Rich.

03:37:24 **Q.** Whose truck was it?

03:37:25 **A.** Murtaugh's.

03:37:27 **Q.** Did it belong -- was it Rich's personal truck or did
03:37:30 it belong to the family --

03:37:31 **A.** It belonged to the family, the junk yard.
03:37:37 **Q.** And again, you indicated -- do you remember the
03:37:40 color of the van?
03:37:40 **A.** Hah?
03:37:41 **Q.** Do you recall --
03:37:42 **A.** Blue.
03:37:42 **Q.** Blue?
03:38:34 (People's Exhibit I was marked for
03:38:36 identification).
03:38:37 MR. OAKES: May I approach, Your Honor?
03:38:40 THE COURT: Absolutely.
03:38:41 **Q.** Mr. Breckenridge, I'm showing you what's been marked
03:38:44 for identification as People's Exhibit I, a bag with a
03:38:46 photograph in it. I'm going to ask you to take a moment
03:38:49 and look at that photograph.
03:38:51 **A.** Um hum.
03:38:52 **Q.** Do you recognize the van in that photograph? Well,
03:38:58 let me ask if that's the van that you took from Gary
03:39:01 Thibodeau's property, originally took?
03:39:02 **A.** No, that ain't the van.
03:39:03 **Q.** That ain't the van?
03:39:04 **A.** No. The van we took from Gary Thibodeau's had a
03:39:08 pink Cadillac right next to it.
03:39:10 **Q.** Again, this might not be from the same day, but
03:39:12 instead of focussing on the Cadillac, look at the van. You

03:39:16 said the van was what color again?

03:39:18 **A.** It was blue, but the van that we took sat right next 03:39:21 to a pink Cadillac in the driveway. There ain't no pink 03:39:25 Cadillac next to it so I'm not going to say that's the van.

03:39:30 THE COURT: I'm not sure he understands your 03:39:33 question.

03:39:33 **A.** The only reason I know there was a pink Cadillac 03:39:36 because I opened up the door to get inside the -- unlock 03:39:38 the steering, I smashed the door with the pink Cadillac. 03:39:42 Pink Cadillac was next to the van. That's not the one.

03:39:45 **Q.** Was the pink Cadillac operable?

03:39:48 **A.** No. They were both junk, sat there for a little 03:39:50 while.

03:39:51 **Q.** Mr. Breckenridge, would you agree that vehicles can 03:39:56 be moved on and off properties at different times?

03:39:58 **A.** Yeah.

03:39:58 **Q.** And I guess what I'm asking you is I'm not asking 03:40:01 you if that's a photograph of the day that you took the 03:40:04 van, with the same exact vehicles. Again, disregard the 03:40:09 other vehicles just focussing on the blue van. Do you 03:40:14 know --

03:40:14 MS. BIANCO: Objection. Asked and answered, 03:40:15 Judge.

03:40:16 THE COURT: I'm going to allow it. I don't 03:40:17 think Mr. Breckenridge understands the question.

03:40:21 THE WITNESS: Yeah, I do. They want to know
03:40:21 if that's the van. If there was a pink Cadillac next
03:40:24 to it, I would say yeah, but there ain't no pink
03:40:26 Cadillac next to it. The van that we took from Gary
03:40:29 Thibodeau's house, there was a pink Cadillac right next
03:40:32 to it, right next to it. There ain't a pink Cadillac
03:40:35 next to that van.

03:40:36 **Q.** So you're not sure.

03:40:37 **A.** No. I am sure. I know what me and Murtaugh junked.
03:40:41 We junked the van that was right next to a pink Cadillac
03:40:44 right in front of the house. There ain't no pink Cadillac
03:40:47 there. Thibodeau knows that, he's right there.

03:40:54 THE COURT: Mr. Breckenridge, don't go beyond
03:40:57 the question.

03:41:01 **Q.** Now you had indicated to Ms. Bianco when you took
03:41:04 the van -- you stole the van.

03:41:07 **A.** Yeah.

03:41:07 **Q.** You didn't have Gary Thibodeau's permission to take
03:41:11 it?

03:41:11 **A.** No.

03:41:11 **Q.** Would it be fair to say you said at the time that
03:41:15 you took it, you don't remember the exact date that you
03:41:17 took it, is that fair?

03:41:18 **A.** No. It was like a month after all the bullshit went
03:41:21 down, all the caution tape was gone and everything.

03:41:24 **Q.** After all the what was gone?

03:41:25 **A.** After Thibodeau got -- after they searched Thibodeau's house and blah, blah, blah, caution tape was down, and then we went and took it. It was like a month, month and a half afterwards.

03:41:35 **Q.** So by the time you had -- by the time you took the van, the police had been to Gary Thibodeau's property on Kenyon Road, they had searched it?

03:41:44 **A.** Yep.

03:41:44 **Q.** And the van was still sitting there at the time?

03:41:46 **A.** Yeah.

03:41:46 **Q.** And was Mr. Thibodeau, Gary Thibodeau locked up at that point when you went and junked the van?

03:41:52 **A.** Yep.

03:41:54 **Q.** Would it be fair to say you figured he's locked up he's not going to miss the van?

03:41:59 **A.** Yeah.

03:41:59 **Q.** And you said it was a stupid mistake.

03:42:02 **A.** Yeah, just like what I'm sitting in prison for right now.

03:42:05 **Q.** Actually I want to ask you about that, Mr. Breckenridge. What did you steal that landed you in prison right now?

03:42:09 **A.** A couple junk tractors, farm tractors.

03:42:12 **Q.** Now, when you got arrested for this charge by the

03:42:18 Oswego County Sheriff's Department, correct?
03:42:20 **A.** Um hum.
03:42:20 **Q.** And as part of that I'd say investigation, you spoke
03:42:24 with Investigator Dale Mac Donald of the Sheriff's
03:42:28 Department?
03:42:28 **A.** Yeah, it had to be him.
03:42:29 **Q.** Mr. Breckenridge, didn't you actually call up
03:42:32 Investigator Mac Donald on the phone and tell him that you
03:42:35 and others stole the property?
03:42:36 **A.** Yep.
03:42:38 **Q.** You just called up out of the blue and told them
03:42:40 didn't you?
03:42:40 **A.** Yes, I did.
03:42:43 **Q.** Okay, because you stole it, so you admitted you
03:42:45 stole it.
03:42:45 **A.** Damn right.
03:42:46 **Q.** And then you pled guilty to the charge?
03:42:48 **A.** Yep.
03:42:49 **Q.** And you accepted your state prison sentence.
03:42:51 **A.** Yep.
03:42:54 **Q.** I want to go back to a statement you made a few
03:43:03 minutes ago or when Ms. Bianco was questioning you. You
03:43:07 talked about Michael Bohrer having a black pickup truck
03:43:10 sometime in ninety-eight, ninety-nine. Then you said you
03:43:13 didn't hang out with him because I think the quote was

03:43:16 "he's too bugged out of a guy." Was that your words?

03:43:20 **A.** That's my words.

03:43:21 **Q.** What do you mean by that?

03:43:22 **A.** He's just -- he was just different.

03:43:24 **Q.** How so?

03:43:25 **A.** He was just -- he was just a weird guy, man. Just
03:43:30 somebody that I don't -- I don't hang out with people like
03:43:32 that. That was it, you know, it was one day, he was -- he
03:43:35 was way enough for me. He was over there biting his
03:43:38 tongue, his arms, and it was like wow, what's wrong with
03:43:42 this guy, you know.

03:43:44 **Q.** Okay, so one day was enough and --

03:43:48 **A.** That was enough for me.

03:43:52 **Q.** Mr. Breckenridge, you said you don't know the
03:44:17 Thibodeaus.

03:44:17 **A.** Nope.

03:44:17 **Q.** You don't know Richard Thibodeau?

03:44:20 **A.** No.

03:44:20 **Q.** You don't know Gary Thibodeau?

03:44:22 **A.** Nope.

03:44:23 **Q.** As far as you know, you've never met them?

03:44:26 **A.** Never.

03:44:27 **Q.** Do you have any personal knowledge whether -- do you
03:44:31 have any personal knowledge regarding Gary Thibodeau's
03:44:34 guilt regarding the abduction and kidnap of Heidi Allen?

03:44:38 **A.** Never knew anything. I never -- I never -- I don't, you know.

03:44:43 **Q.** Would it be fair to say as you sit there you personally don't know whether he's guilty or innocent?

03:44:49 **A.** No.

03:44:52 **Q.** Let me ask you, did you have anything to do with the abduction of Heidi Allen?

03:44:58 **A.** No.

03:44:59 **Q.** Did you go to the D&W Store on Easter morning of ninety-four?

03:45:05 **A.** No.

03:45:06 **Q.** Did you work with any other people to lure her out of the store and throw her in a van?

03:45:13 **A.** Nope.

03:45:13 **Q.** Did you see Heidi Allen?

03:45:16 **A.** No.

03:45:16 **Q.** At Easter morning of ninety-four or any time after that?

03:45:19 **A.** No.

03:45:21 **Q.** Did you ever dispose of her remains?

03:45:24 **A.** Nope.

03:45:26 **Q.** Do you have any idea where her remains are?

03:45:29 **A.** Nope.

03:45:31 **Q.** If you did, if you had heard reliable information regarding where her remains are, would you tell somebody?

03:45:38 **A.** Yes, I would.

03:45:39 **Q.** Why would you?

03:45:39 **A.** Because I got kids that age, I would want to know if
03:45:44 something happened to one of my daughters, I would want to
03:45:46 know what happened to my kid, yes, I would, and that's the
03:45:50 God's honest truth. If I knew where she was, I'd be
03:45:53 telling right here and right now.

03:45:55 **Q.** But you don't know?

03:45:56 **A.** But I don't know. I wish I did.

03:46:00 **Q.** Thank you, Mr. Breckenridge.

03:46:04 MS. BIANCO: Can we have a moment, Judge?

03:46:06 THE COURT: Yeah because I want to see if we
03:46:08 have enough time or do you anticipate bringing Mr.
03:46:12 Breckenridge back tomorrow?

03:46:15 MS. PEEBLES: Maybe we could bring him back
03:46:16 tomorrow, Your Honor, first thing.

03:46:17 THE COURT: Can we approach please?

03:46:18 (Whereupon, there was an off the record
03:46:20 discussion at the bench).

03:47:00 THE COURT: Ms. Peebles, Ms. Bianco and the
03:47:05 People, we are going to adjourn the matter till nine
03:47:09 o'clock tomorrow morning. Mr. Breckenridge will be the
03:47:13 first planned witness tomorrow morning subject to Judge
03:47:15 Fahey's availability, is that correct, Ms. Peebles?

03:47:17 MS. PEEBLES: Yes, it is Your Honor.

03:47:18 THE COURT: Mr. Oakes, Mr. Moody?

03:47:20 MR. OAKES: Yes, Your Honor.

03:47:21 THE COURT: We stand in recess today. You'll
03:47:23 be brought back tomorrow, sir.

(Conclusion of Proceeding).

* * *

CERTIFICATE

I, JENNIFER ADYDAN, an Official Court Reporter in and for the State of New York, Fifth Judicial District, do hereby certify that the foregoing is a true, complete and accurate transcript of my stenographic notes taken in the above-entitled matter and the whole thereof to the best of my ability.

Jennifer Adydan
Jennifer Adydan
Official Court Reporter

DATED: January 24, 2015

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF OSWEGO: CRIMINAL TERM:

---------------------------------------x

Indict. No.
94C-0161

THE PEOPLE OF THE STATE OF NEW YORK

HEARING
VOLUME 3

- against-

GARY THIBODEAU,

Defendant.

---------------------------------------x

Public Safety Center
39 Churchill Road
Oswego, NY 13126

DATE: January 14, 2015

Before:

HONORABLE DANIEL R. KING
Acting County Court Judge

Appearances:

GREGORY S. OAKES, ESQ.
District Attorney, Oswego County
MARK M. MOODY, ESQ.
Chief Assistant District Attorney

OFFICE OF THE FEDERAL PUBLIC DEFENDER
BY: LISA PEEBLES, ESQ., Public Defender
RANDI JUDA BIANCO, ESQ., Assistant Public Defender

Defendant is present

08:48:16

08:48:16

INDEX TO WITNESSES

	Direct	Cross	Redirect	Recross
FOR THE DEFENDANT:				
Roger Breckenridge	--	--	390	--
Michael Bohrer	406	--	--	--

INDEX TO EXHIBITS

	Identification	Evidence
FOR THE DEFENDANT:		
49. Breckenridge statement	--	394
52. Bohrer Bivens statement	--	473
56. Bohrer/Allen triangle story	--	482
130. Bohrer notes	--	495

09:28:19 THE COURT: Good morning everybody. Do you
09:28:23 want to use the --

09:28:24 MS. PEEBLES: Yes, I think it's a good idea.

09:29:09 (Whereupon, there was a pause in the
09:29:14 proceeding.)

09:29:14 THE COURT: Okay, Ms. Peebles and Ms. Bianco,
09:29:26 do you want to make some record arguments at this time?

09:29:29 MS. PEEBLES: Yes, Your Honor.

09:29:30 THE COURT: Okay, Ms. Peebles, go ahead.

09:29:32 MS. PEEBLES: Yesterday we were approached and
09:29:34 asked whether we would be in agreement with going
09:29:38 through the boxes that were -- the Heidi Allen
09:29:43 investigative boxes at the Sheriff's Department, and in
09:29:47 terms of going through them because there was a
09:29:48 question about the integrity of the investigation and
09:29:51 the Brady material that may or may not still exist, and
09:29:56 at that time yesterday it obviously caught us by
09:29:59 surprise as it did on Friday when we received the
09:30:05 twenty-six hundred pages, and as much as I would love
09:30:08 to go through all of those documents, and I could have
09:30:11 done that eight months ago, had I been invited I would
09:30:14 have, but at this point in time, Your Honor, I simply
09:30:16 don't have the resources to spend to go through all of
09:30:19 those documents to determine what may or may not be
09:30:22 Brady, what may or may not -- should have been

09:30:24 disclosed years ago or currently, so in light of that,
09:30:29 Your Honor, I have to withdraw my agreement to go with
09:30:33 the prosecutor to look at the boxes.

09:30:36 I did subpoena Reuel Todd this morning because
09:30:39 I would like to question him regarding the integrity.
09:30:43 The prosecutor has indicated that he has some serious
09:30:46 doubts and questions about the integrity of the
09:30:48 investigation and what has not been turned over to the
09:30:51 defense, so with that, Your Honor, I have to say that I
09:30:55 would continue to want to move forward with the
09:30:59 proceedings in the manner in which we are, and I'm not
09:31:01 in a position to agree to any type of an adjournment so
09:31:05 that they can figure out what they have and what they
09:31:10 don't have. Secondly --

09:31:11 THE COURT: Before we move to the second
09:31:12 point, Mr. Oakes, your response to that?

09:31:14 MR. OAKES: Thank you. Your Honor, as Ms.
09:31:25 Peebles indicated, previously discussed on Friday my
09:31:28 office provided a number of documents and disks and
09:31:32 recordings to the Federal Public Defender's Office for
09:31:35 their review. Seeing the product that was delivered to
09:31:39 them over the course of the weekend, I personally went
09:31:41 to the Sheriff's Department, I worked with Investigator
09:31:45 Pietroski to review the file so that I could go through
09:31:47 personally, make a copy of every piece of paper in the

09:31:50 file, front and back, to make sure that everything was
09:31:52 turned over to Ms. Peebles.

09:31:55 During the course of my personal review of the
09:31:58 file, I learned certain statements that we did not --
09:32:02 the DA's office did not have in our possession at the
09:32:06 time, a lead that was missing, and a lead, again, as we
09:32:12 discussed last week, a lead that had not been followed
09:32:15 up on. Again, I personally went through, made a copy
09:32:18 of all those items, and then scanned those on Monday
09:32:21 morning, provided an organized digital copy of all
09:32:25 those files with the lead log, each of those leads
09:32:29 broken out individually into statements and the reports
09:32:32 all individually categorized, and I provided that to
09:32:35 the Court and counsel so they would have an organized
09:32:38 fashion.

09:32:39 Additionally I have provided a three-ring
09:32:42 binder to counsel with all the CDs and photographs,
09:32:45 interviews and audios with a detailed list of what each
09:32:48 one of those were so it could be used for their easy
09:32:51 reference. As I indicated over the course of the
09:32:56 weekend, on Saturday when I discovered certain new --
09:33:01 at least new reviewed by me statement from Romano
09:33:05 Clark, I immediately contacted Mr. Clark to see if his
09:33:10 statement was in fact true, got good contact
09:33:15 information for him, verified his number, and

09:33:18 immediately e-mailed Ms. Peebles and the Court and the
09:33:21 clerk with that information, and I reached out to Mr.
09:33:25 Clark and told him that Ms. Peebles would be reaching
09:33:27 out to him, and if she did so, to please respond and
09:33:30 please speak with her.

09:33:32 On Sunday evening I became aware, finally
09:33:35 received a copy of the missing lead, lead number
09:33:37 fifteen twenty-nine, had the investigator send me an
09:33:44 e-mail detailing that, and saw the SJS report, and that
09:33:48 was an individual by the name of Chris Combes. I
09:33:50 immediately reached out to Ms. Peebles to let her know
09:33:53 of that, again, trying to make a good faith effort. I
09:33:56 left voicemail for her. I sent four text messages to
09:34:00 her essentially saying urgent regarding Brady, please
09:34:04 contact me. I did not get a response back from Ms.
09:34:07 Peebles. I even went so far as to contact John O'Brien
09:34:11 of the paper who's been in contact with the defense and
09:34:13 asked him if he would forward my number on to Mr.
09:34:16 Haumann, the investigator for the defense, so that they
09:34:19 can reach out to me. I heard nothing.

09:34:21 THE COURT: I think Ms. Peebles is talking
09:34:23 more about the information that was disclosed yesterday
09:34:26 morning, that agreement between the both the Federal
09:34:30 Public Defender's Office and the District Attorney's
09:34:34 Office as opposed to maybe or possibly calling the AG's

09:34:36 office in. There is an agreement between both parties to have your mutual investigators effectively comb the file to find out if there's additional Brady material. Ms. Peebles initially consented to that in her office. She said this morning she's going to withdraw that consent. I'm assuming you don't oppose her withdrawal of that consent, and the burden of proof is still going to remain on the People to continue to seek out Brady information.

09:35:04 MR. OAKES: It does, Your Honor, and Your Honor, I was endeavoring to establish a record of the People's attempt to rectify the situation, my office's attempt to make sure that defense has all Brady material, and again, when we became aware of it, again, with Mr. Combes on Sunday evening, I had the investigators from the Sheriff's Department go find him.

09:35:24 THE COURT: Sure.

09:35:24 MR. OAKES: Get a new statement. I had to go through counsel because he presently has another charge, and again, obtained a statement, and I went so far as to subpoena Mr. Combes for Monday morning so that he would be available for Ms. Peebles to speak with.

09:35:38 THE COURT: Okay.

09:35:39 MR. OAKES: On Monday evening I learned of a lead from 2002 which involved the name of Tracey Breckenridge. On Monday evening, again, I asked the Sheriff's Department to send investigators to go out, find the relevant people or any associated people with that. They did so. They obtained statements from those individuals, and yesterday morning, again, that was Monday evening, so yesterday, which was Tuesday, I provided those to Ms. Peebles so she had those statements, and additionally, on Monday night I had those four individuals served with subpoenas to be here yesterday at noon so they are available for the defense, and again, I personally introduced Mr. Haumann to those four individuals so that he could speak with them, and it's my understanding that he did speak with them in fact yesterday.
09:35:42
09:35:46
09:35:49
09:35:53
09:35:55
09:35:58
09:36:01
09:36:04
09:36:06
09:36:10
09:36:13
09:36:16
09:36:19
09:36:22
09:36:23

09:36:26 Getting to the issue of the agreement, given the concerns regarding the items that were missing, yesterday morning I approached defense counsel and again I expressed concerns about whether she in fact has all Brady material given the condition of the Sheriff's file quite frankly and what I viewed in the last few days. What I suggested to Ms. Peebles is that we bring in the Attorney General's Office's Conviction Integrity Unit to reach out to them, to have them
09:36:29
09:36:32
09:36:35
09:36:38
09:36:41
09:36:45
09:36:49
09:36:54

09:36:57 review not only the Sheriff's file, but I was willing 09:37:00 to offer up the People's file, the DA's Office file, to 09:37:03 make sure that all evidence was turned over, and again, 09:37:07 to make sure that the jury did reach a just outcome. I 09:37:12 wasn't with the office twenty years ago. I have my 09:37:15 view of the evidence at that time but I wasn't there. 09:37:17 My thought is by bringing in a third party, that would 09:37:21 give assurances to all parties and the public and the 09:37:24 Court that this is being done independently, fairly, 09:37:27 without bias. Ms. Peebles had concerns regarding the 09:37:32 length of time that that might take given the 09:37:35 defendant's health, and I understood that, and in fact, 09:37:38 she and Ms. Bianco, I forget which, did actually 09:37:41 propose having one of their investigators and my 09:37:45 investigator go to the Sheriff's Department, so when 09:37:48 they had made that offer, I thought that was 09:37:50 reasonable, I'd accepted that offer, and that's what we 09:37:54 discussed with the Court and stipulated to.

09:37:58 Again, if Ms. Peebles is no longer in a 09:38:02 position to honor that agreement that she made with the 09:38:05 Court and my office, I understand. I do realize that 09:38:08 the burden remains on the People, and I will work with 09:38:11 the Sheriff's Department to provide copies of all 09:38:14 reports, and what I have asked the Sheriff's Department 09:38:17 to do, and actually before our conversation even

09:38:21 yesterday, was to go back to June first of 1995 which
09:38:24 was during the point of time during the trial of this
09:38:26 matter and get all leads paperwork from 1995, June
09:38:30 first of 1995 coming forward to today, to make sure
09:38:35 that defense counsel has everything, and I realize that
09:38:37 burden is on me, not the defense, but again, Your
09:38:41 Honor, I wanted to have an open system. The defense
09:38:45 has questions, and there's been insinuations or
09:38:49 accusations of a coverup, that the Sheriff's Department
09:38:51 does not want to fully investigate this at times, the
09:38:55 accusations that my office doesn't want to fully
09:38:58 investigate this.

09:38:59 Your Honor, I have to say right now as I have
09:39:02 said from day one, my goal as a prosecutor is to do
09:39:05 justice. My goal as a prosecutor is to get to the
09:39:07 truth the best we can determine. I was not in the
09:39:11 office twenty years ago. I have no vested interest in
09:39:13 the conviction of Gary Thibodeau. As I've said to
09:39:16 every individual, if he is innocent, I want to be the
09:39:19 first person to set him free, I will personally move to
09:39:22 that, if I have compelling evidence that he's in fact
09:39:25 innocent. If he's guilty, he deserves to be where he's
09:39:29 at, but let's have an open and honest process. My view
09:39:32 is to put reliable credible evidence before this court
09:39:37 so this court can make that determination, but again,

09:39:39 to the end of trying to be ethical and fair, trying to get a just outcome, I thought it was appropriate to let the defense personally review the file. That way if there was any question whether a document was Brady or not Brady, whether it potentially could even benefit the defense because if they may have information that I don't, they could look at a piece of paper and think this would help me based on knowledge they have that's peculiar to them or specific to them that I don't have, I want to give them that opportunity.

09:40:09 If the defendant and the defense is saying that they aren't willing to go to the Sheriff's Department or unable to because of resources, I accept that. Again, I'm not trying to be argumentative, but Ms. Peebles, Ms. Bianco is here flanked by an investigator, flanked by two technical persons this week, with a staff of five here to put up slides for the Court when the Court has exhibits. The Court, in all due respect, the Court doesn't need a projector, you know. They're saying they don't have the resources to put an investigator to review the file, but they have somebody here to put up images on a screen for the benefit of the media. Again, if that's how they choose to use their resources, that's their choice, Your Honor, I realize the obligation lies with me, but I

09:40:58 just want to put it on the record that I want it to be
09:41:01 a fair system, that I have made the offer to them to
09:41:03 open up the entire sheriff's file and the sheriff has
09:41:06 done that too. I spoke with the sheriff personally
09:41:09 yesterday morning. He said Greg, tell them they're
09:41:11 welcome to come on over. We have nothing to hide. If
09:41:15 they don't want to accept that invitation, that's their
09:41:18 choice, but I don't want it to be portrayed as we're
09:41:21 trying to hide something or we're engaging in a
09:41:24 coverup, and that's been the story line from day one,
09:41:26 Your Honor.

09:41:27 THE COURT: I appreciate that.

09:41:29 MS. PEEBLES: I may be heard on those matters
09:41:31 addressed by Mr. Oakes.

09:41:32 THE COURT: Sure.

09:41:32 MS. PEEBLES: First and foremost, I think it's
09:41:35 important to point out had this court denied our motion
09:41:39 for a hearing, we never would have seen the almost
09:41:43 three-thousand pages of discovery, the eighteen hours
09:41:47 of audio, the eight hours of video which had been
09:41:51 created before they filed their response, we never
09:41:55 would have seen that information, so to sit here and
09:41:59 tell this court that they are trying to fulfill their
09:42:02 ethical obligations is nothing -- is the most
09:42:05 disingenuous argument I've heard. It's ridiculous. My

09:42:10 investigator was called at almost quarter after five on Friday, or quarter after four, and I'm asked whether he can drive to the Great Northern Mall to meet their investigator to pick up a box. I thought it was going to be -- I had no idea. I had been pulling teeth. I was trying to get the search report. I had made numerous requests for the search report that they conducted in August of 2014, and he said I would get it. I thought that's what I was going to be getting on Friday which I would have had no problem with. When he came back with that box my jaw dropped. My jaw dropped. I -- I was dumped on on Friday, so to sit here -- it was completely calculated for me to want to request an adjournment of this case, there is no question in my mind, and thank God I had the resources and the great people in my office, and those slides are for me when I'm standing up there and I'm trying to see when I'm asking questions to the witness, so despite what Mr. Oakes says, that I'm attempting to poison the media with the exhibits that I'm introducing which by the way would be public record any way, is ridiculous.

09:43:20 As far as the integrity of this investigation, I sat in that room yesterday with Mr. Oakes and he told me that he questioned the integrity of the Sheriff's Department, that he had questions with regard to the

09:43:32 lead investigator assigned to this case, that is 09:43:34 Investigator Pietroski. He sat there and told me that 09:43:38 he was questioning his integrity with regard to this 09:43:41 investigation. He invited us after I said I wouldn't 09:43:46 adjourn, I wouldn't want to adjourn it, it would take 09:43:48 forever for the Attorney General's Office to come in 09:43:51 and look at these documents, and do I want to see 09:43:54 what's in there? Absolutely. The reason he did it is 09:43:57 because he said there was sloppy paperwork. There were 09:43:59 lead numbers that weren't in the right order, there 09:44:02 were documents that didn't have leads attached to it, 09:44:04 he said it was miss-numbered, and that's my problem? 09:44:08 Now it's my responsibility to pull out my Brady 09:44:11 material? I would have happily done that a year ago 09:44:14 but I wasn't invited in the office. Now at the 09:44:18 eleventh hour I'm supposed to dig through these boxes, 09:44:20 it's my responsibility. It's ridiculous.

09:44:25 As far as the question with regard to moving 09:44:32 forward with this, again, Your Honor, I say we move 09:44:37 forward, and if it rains Brady some other time down the 09:44:41 road and things go the way differently than I want them 09:44:44 to, then perhaps we'll address it again, but absolutely 09:44:47 want to proceed further on this, and I'm offended by 09:44:51 these comments and his argument concerning what 09:44:53 transpired over the weekend. I'm absolutely

09:44:56 flabbergasted, and it continues, and I feel like the attempts to manipulate me into agreements because he tells me he's going to do the right thing. He won't do anything unless I provide him with DNA evidence, and that's not going to happen because -- because what we're learning through these witnesses is that her remains have been shipped to Canada, so I will never be able to walk in this courtroom and provide Mr. Oakes with DNA, so for him to sit here again and suggest that he wants to do the right thing, I find that hard to believe.

09:45:28 MR. OAKES: Thirty seconds, Your Honor. Your Honor, to the point of had they not requested a hearing, this never would have been disclosed, the People consented to a hearing. Upon the filing of motions, the People said we see the necessity of a hearing, we'd agree to it. We never asked the Court to decide simply solely upon the papers. Once they were filed, we'd indicated that some of the issues upon filing, that it could be decided upon the papers, but if -- later discussions with Mr. Lyndaker, counsel, we acknowledged that there needed to be a hearing, and we readily agreed and we haven't fought this hearing. We welcome it. Thank you.

09:46:10 THE COURT: Just a second, folks.

(Whereupon, there was a pause in the proceeding).

09:46:20 THE COURT: Ms. Peebles, you also want to be heard with regard to some other issues we discussed at the bench?

09:46:26 MS. PEEBLES: Yes, Your Honor. There are some evidentiary issues that we discussed, and I want to make a record of that. It's our position we have some witnesses that we intend to call that would actually provide statements that would be against penal interest with regard to Steen, Breckenridge, Bohrer and Wescott, and we believe that the proof would be such that the witnesses we would call would suggest that they heard confessions or incriminating statements against penal interest, and we believe they would be admissible, and there is an exception to the hearsay rule, and the rules are relaxed, and we do believe that if Mr. Thibodeau is afforded a new trial, that that evidence would in fact be admissible under that exception of the hearsay rule, and we believe that we should be able to call our witnesses to testify in that regard. And in addition, Your Honor, while -- withdraw that. I think we addressed it in the other issue but on that point.

09:47:23 THE COURT: Okay, Mr. Oakes?

09:47:24 MR. OAKES: Thank you, Your Honor.

09:47:27 THE COURT: I don't think your mike's working. Mr. Millich will fix your mike.

(Whereupon, there was a pause in the proceeding).

09:47:46 THE COURT: All right, Mr. Oakes.

09:47:47 MR. OAKES: Thank you. Your Honor, again, there is proposed testimony with various witnesses by the defense which the People believe is hearsay and doesn't fall under an exception to the hearsay rule; most notably, a declaration against penal interest. The People have consented -- the People would object to that hearsay being admitted at a trial because we believe it's not admissible. However, for the purpose of this hearing, we would consent to that being admitted for the Court's review so the Court can make a proper determination whether it's admissible at trial, much like a Huntley hearing where the Court would hear it, determine whether it should be accepted at trial, and again, I would just note on the record, Your Honor, the proposed stipulations that I'd submitted to the Court, provided to counsel, at the very top of that it said the People are willing to stipulate to the admission.

09:48:36 THE COURT: Let's not get to that -- let's not get to that issue yet.

09:48:40 MR. OAKES: Okay.
09:48:41 THE COURT: Okay. So with regard to the
09:48:43 defendant's position that it is hearsay, but it fits
09:48:45 within the hearsay exception being declaration against
09:48:49 penal interest, that's your position, correct?
09:48:50 MS. PEEBLES: It is, Judge, and we think the
09:48:52 caselaw supports that.
09:48:53 THE COURT: I understand that. Your position
09:48:54 is you don't think it fits within the hearsay
09:48:58 exception. Do you have a standing objection to this
09:49:01 testimony, but you're going to let it come in for the
09:49:04 Court's review to see if it does fit within the hearsay
09:49:07 exception?
09:49:07 MR. OAKES: Yes, Your Honor.
09:49:08 THE COURT: So Mr. Oakes does not have to
09:49:10 stand up every time one of these people is testifying
09:49:12 to what is apparently hearsay to object. Is that your
09:49:14 understanding as well, Ms. Peebles?
09:49:17 MS. PEEBLES: It is.
09:49:17 THE COURT: That's fine. That's that issue,
09:49:18 okay, and you now have an issue regarding a
09:49:22 stipulation?
09:49:22 MR. OAKES: Your Honor, in relating to the
09:49:25 idea of hearsay and hearsay coming in, with that
09:49:29 stipulation, the People had agreed for those various

09:49:32 documents, again, that they would be submitted not for
09:49:35 trial, not for evidence that accepted here then would
09:49:39 be able to go on to be accepted at trial, but again, in
09:49:42 that proposed stipulation I wrote, "The People are
09:49:44 willing to stipulate to the admission of the following
09:49:45 documents/items as evidence for the purpose of the CPL
09:49:49 440.10 hearing on this matter. To be clear, the People
09:49:54 do not believe that all such items could properly be
09:49:57 received as evidence at trial; however, the documents
09:50:00 should be admitted at this time so that the Court may
09:50:02 properly decide the pending motion." I think that's
09:50:05 consistent with the statement this morning.

09:50:08 THE COURT: Okay.

09:50:10 MR. OAKES: Along that lines, we had a
09:50:12 discussion in chambers regarding Ms. Priest and whether
09:50:16 she would testify, and Ms. Peebles indicated that Tonya
09:50:20 Priest will not be testifying, or at least at this
09:50:22 point they don't intend to call her as a witness
09:50:24 because her statement was introduced in evidence. I
09:50:26 couldn't recall that statement being introduced in
09:50:28 evidence and asked Ms. Peebles and she said well, it's
09:50:32 part of Exhibit 35. As the Court may recall, Exhibit
09:50:38 35 is the June six, 2013 letter and the packet that I
09:50:41 had sent to Ms. Bianco. The People agreed to that
09:50:45 being admitted, Your Honor, for the purpose of showing

09:50:48 what was disclosed to counsel at the time because that 09:50:50 was the relevant issue, to show what was disclosed to 09:50:53 counsel, not that each of those items accepted therein 09:50:57 were statements that could be accepted for the truth of 09:51:01 the matters asserted therein. Again, though it's 09:51:04 attached to Exhibit 35, it wasn't meant for the Court 09:51:06 to receive that as her testimony or in lieu of Tonya 09:51:12 Priest's testimony, it was being offered to show that 09:51:14 that document was provided to the defense, the 09:51:17 defendant and Judge Hafner, when it was made a public 09:51:21 record when it was filed with the Court, when it was 09:51:23 previously disclosed to the defense counsel and 09:51:25 defendant so they would have all Brady material at that 09:51:29 time, and I would ask the Court to consider Exhibit 35 09:51:32 for that limited purpose of what was disclosed to the 09:51:37 defense, not for the truth of the matter of every 09:51:40 statement made therein.

09:51:42 THE COURT: Ms. Peebles?

09:51:43 MS. PEEBLES: Judge, first of all, before I 09:51:45 address that argument, I just want to point out because 09:51:47 I think often I feel like I'm losing my mind with the 09:51:50 statements made by Mr. Oakes. His conclusion to his 09:51:54 motion that was filed on October tenth, 2014, "For all 09:51:57 the foregoing reasons, this Court should deny 09:52:00 defendant's motion to vacate his judgment on the

09:52:04 grounds of newly discovered evidence and pursuant to
09:52:08 CPL 440.10(1)(g) without the necessity of a hearing
09:52:09 based upon the law and the papers submitted by both
09:52:12 parties." I have failed to see where he agreed to this
09:52:15 hearing, so I don't know where he's coming up with
09:52:18 that.

09:52:18 Now as far as the issue that he just
09:52:21 mentioned, he -- Mr. Oakes changed my exhibit and
09:52:26 introduced Exhibit 35 which contains Tonya Priest's
09:52:30 statement, Tonya Priest's sworn statement, which is
09:52:32 nothing more than her statement regarding out of court
09:52:36 hearsay statements against penal interest regarding Mr.
09:52:40 Steen, is nothing different than what the Court's going
09:52:41 to hear from a bunch of other witnesses that we intend
09:52:44 to call, so again, Your Honor, the point is if she were
09:52:48 called to testify, that's what she would say, and they
09:52:50 could cross-examine her, but the bottom line is they
09:52:52 could call her themselves, they could call them if
09:52:55 they -- they could call Tonya Priest if they choose to.

09:52:58 THE COURT: How do Tonya Priest's statements
09:53:00 act as hearsay exception under declaration against
09:53:04 penal interest of Tonya Priest?

09:53:06 MS. PEEBLES: Your Honor, the statement was
09:53:08 stipulated to by the People. They actually moved it
09:53:11 into evidence and stipulated to it. It's a sworn

09:53:14 statement, and that's for the Court's consideration. 09:53:18 So I'm saying that it's -- it doesn't have to fit an 09:53:22 exception for the Court's purposes obviously because 09:53:24 they agreed to introduce it.

09:53:25 THE COURT: What about Mr. Oakes's argument 09:53:27 that the purpose of the introduction is simply to show 09:53:30 it was disclosed to the People, I'm sorry, I'm sorry, 09:53:32 to the defendant, I apologize.

09:53:34 MS. PEEBLES: Where does it -- where did that 09:53:36 agreement come to because if he had an agreement with 09:53:39 somebody that that was what was suggested, it wasn't my 09:53:41 understanding. It's -- everything's in there including 09:53:44 the audio recording, the interview with Pietroski and 09:53:48 Wescott, everything is in there, so for him to now 09:53:50 suggest that I misunderstood the stipulation, I'm 09:53:54 perplexed again. I was only going to introduce part of 09:53:58 the exhibits and he -- he wanted me to introduce the 09:54:01 entire packet which I did, so it is simply for the 09:54:04 Court to review, and I'm not suggesting that we would 09:54:08 do it in that manner if Mr. Thibodeau was granted a new 09:54:11 trial, but he stipulated to it.

09:54:15 THE COURT: The Court's going to reserve on 09:54:16 that. Anything else, Ms. Peebles? Or Mr. Oakes?

09:54:22 MR. OAKES: Your Honor --

09:54:23 THE COURT: Your mike's on so the conversation

09:54:25 back and forth.

09:54:26 MS. PEEBLES: I guess just to point out, Tonya Priest has talked repeatedly with the prosecution, and she's been interviewed. Her conversation is also there that Mr. Oakes interviewed her on, on the audio, so that's -- that's in with the packet of information, so, you know, she's been available to them and they've talked to her on multiple occasions.

09:54:47 THE COURT: Mr. Oakes?

09:54:48 MR. OAKES: Your Honor, regarding the conclusions of law at the end of my motion, again, I had indicated, I said several moments ago, that in our papers we said it can be decided as a matter of law upon the papers. Subsequent to that we talked to defense counsel, Mr. Lyndaker, and agreed to a hearing, and that's actually accurate, but regarding Ms. Priest, again, the defense on Exhibit 35 offered just my letter, the cover letter. I was going to put that in through Ms. Bianco. Again, the purpose of Ms. Bianco's testimony was to show what she had received and what the basis for her -- as a foundation for her subsequent actions. What I'd suggested is rather than just put the cover letter, so the Court has all the information, let's put in exactly the duplicative equivalent or duplicative copy of exactly what she received.

09:55:40 Again, at no point -- I certainly didn't
09:55:45 intend to let all that hearsay come in and be
09:55:47 considered for the truth of the matters asserted, and
09:55:50 as the Court recognized, Tonya Priest's statement is
09:55:54 hearsay, but Your Honor, again, Ms. Peebles indicated
09:55:58 that we can call Tonya Priest as a witness. I would
09:56:02 not call Tonya Priest as a witness, Your Honor, because
09:56:05 I don't believe she's credible, and if I called her as
09:56:08 my own witness, I could not impeach her with her prior
09:56:11 inconsistent statements.

09:56:13 If we're making a full record, this morning I
09:56:15 provided to the Court and counsel along with certain
09:56:19 lead sheets the Sheriff's Department developed during
09:56:22 the last week, leads fifteen fifty-nine, fifteen sixty,
09:56:26 fifteen sixty-one and fifteen sixty-two, and those are
09:56:33 basically developed since January eighth when those
09:56:36 leads came in and they have been working those leads.

09:56:39 Additionally last night, the New York State
09:56:44 Police, or I guess Andy -- well, an investigator for
09:56:49 the New York State Police contacted the Sheriff's
09:56:52 Department indicating that Tonya Priest had called
09:56:54 them, wanted to make a statement to the New York State
09:56:58 Police. Because the Sheriff's Department is the lead
09:56:59 investigative agency, by protocol the State Police
09:57:03 reached out to them. I was approached, we spoke with

09:57:06 Lieutenant Rostal (ph), I said I understand that Ms. Priest does not trust the Sheriff's Department, that she does not feel comfortable speaking with them, and I said let's forget protocol. If she wants to talk to the State Police, if that's who she sought out, let's let her speak to them. I personally called the senior investigator in Fulton barracks and asked him as a courtesy would you please interview her last night, let her give her statement, whatever it is she has to say.

09:57:34 Overnight we were faxed or this morning a copy of Ms. Priest's statement in which for the first time last night she disclosed that in addition to hearing statements from James Thumper Steen, in her presence, and in the presence of Vickie West, now apparently a Charles Carr, the victim of Mr. Steen's homicide, he was also present, and two years of statements to law enforcement, the media, the Public Defender's Office, she's never said Mr. Carr was present, but now last night there he is here in this admission. Of course Mr. Carr is deceased and can't refute that allegation, but in her statement she gave to State Police, she also detailed new incriminating statements she heard from Michael Bohrer implicating him in the abduction, disposal and murder of Heidi Allen. Again, those statements attributed to Mr. Bohrer last night have

09:58:27 never been mentioned in telephone calls to me, interviews with Sheriff's Department, interviews with the Public Defender's Office I would presume or also it would have been in their motion. She also last night for the first time that I'm aware of has indicated that Roger Breckenridge made incriminating statements in her presence about Heidi Allen, implicating himself in her abduction and murder, and again, despite repeated interviews with myself, Sheriff's Department, law enforcement, again, that was disclosed for the first time.

09:59:04 The question's come up why I have questioned Ms. Priest's credibility throughout this? Your Honor, it's this type of behavior right here. Every time a story is told is added to, is added to, there's some new detail. Now instead of just being the implicated -- the incriminating statements, admissions of James Steen, now she gives a statement that she's heard all three people, Roger Breckenridge, Michael Bohrer, James Steen all make admissions admitting to this crime. I wish she had said so two years ago. It would have been a heck of a lot easier in this investigation.

09:59:40 Again, in her e-mails, when she came up to meet with me and Investigator Pietroski, within an hour

09:59:48 or so of speaking with us about Heidi Allen, she
09:59:51 immediately turned her attention to the death of her
09:59:53 husband, Wayne Priest, wanting the sheriffs to reopen
09:59:56 that investigation, and it became clear in that
09:59:59 conversation that was her purpose in being here. It --
10:00:02 Heidi Allen was a ruse to get our attention so we would
10:00:07 focus on Wayne Priest. We have e-mails and letters
10:00:10 that she has sent to various law enforcement officers,
10:00:13 Your Honor, indicating there's a vast conspiracy, that
10:00:15 the people who killed Heidi Allen also killed her
10:00:19 husband, Wayne Priest, and now recently she contacted
10:00:23 Investigator Montileone (ph) of the Albany County
10:00:31 Sheriff's Department and now this conspiracy extends to
10:00:34 others. Now it's not just Heidi Allen and her husband,
10:00:37 but there's two other people that these people have
10:00:39 executed here in Oswego County, one of which was an
10:00:44 auto accident, and again, her husband died in a
10:00:47 motorcycle accident.

10:00:51 I would want to resent Ms. Priest if I didn't
10:00:55 feel so sorry for her, Your Honor. That is -- these
10:01:01 changing stories, quite frankly, is the reason we
10:01:04 didn't believe she was reliable, why we couldn't trust
10:01:07 her account of what Mr. Steen told her. It's the
10:01:10 reason we're not calling her as a witness, and I bet
10:01:12 and I would -- well, I think, Your Honor, those

10:01:17 changing stories may very well be the fact why the defense is no longer willing to call her as a witness either to subject her to cross-examination so that this Court can hear about those inconsistent statements, but again, certainly her hearsay statements shouldn't be accepted through the back door when it was offered, and at least in my mind offered for the purpose of showing why Ms. Bianco took the steps that she did, not for the truth of the matters asserted therein. 10:01:44

10:01:45 THE COURT: Ms. Peebles, do you want to address that? 10:01:47

10:01:47 MS. PEEBLES: Yes. First and foremost, Ms. Priest reached out to law enforcement long before February of 2013. She was going through NCMEC, and she had made multiple efforts in trying to convey information anonymously. We have those e-mails, just regarding Heidi Allen, not Wayne Priest, and is it unusual for a wife to be obsessed with her husband's death? How do you hold that against a woman because she's upset about her husband's death. If she thinks there is a conspiracy regarding the death of her husband and it prompted her to come forward because she had information that she felt she should have disclosed long ago, how does that undermine her credibility and her truthfulness? Is it because -- and the suggestion 10:02:33

10:02:36 that he knows my conversations with Ms. Priest? He
10:02:41 doesn't. I've had multiple conversations with Ms.
10:02:44 Priest. This isn't the first time I've heard her talk
10:02:47 about Roger Breckenridge or Michael Bohrer, and
10:02:49 frankly, it has nothing to do with avoiding
10:02:53 cross-examination of Ms. Priest. Has nothing to do
10:02:56 with it. The prosecution agreed to allow me to put in
10:03:00 her sworn statement, and to subject her to additional
10:03:04 harassment for doing what was the right thing for her
10:03:06 and to come forward, I'm not going to do it if I have
10:03:09 her sworn statement in evidence, there's no reason to,
10:03:12 and I have other witnesses that are going to come in
10:03:14 and testify about the same thing, so it's not -- it's
10:03:17 not necessary, and the fact that they want to
10:03:19 cross-examine her is not my problem. They can subpoena
10:03:23 her and they can call her as their witness.

10:03:26 And again, Judge, the idea that they consent,
10:03:30 I'm looking for it because I've never seen it. I've
10:03:32 never heard it, I've never seen it. As far as I knew,
10:03:34 the Court ruled that we were granted a hearing and a
10:03:38 date was set. That was it. I never had a conversation
10:03:40 with Mr. Oakes ever that he consented to this, so I
10:03:45 don't know where he's coming up with that, and again,
10:03:47 it continues to concern me with regards to his
10:03:50 representations because they're simply not true and

10:03:54 I -- I always want to give people the benefit of the doubt, but it has gotten to the point now where I'm boiling over, and I'm not going to sit back and -- and continue to not say anything which is why we're having this discussion, so with that, Your Honor, with regard to that issue, I -- I think that the Court has her statement, it's in evidence, and there's no point in calling her.

10:04:18 THE COURT: The Court will reserve on that decision. We'll have a decision by the end of the day with regard to that matter. Are we ready to move forward?

10:04:27 MS. BIANCO: Yes, we are.

10:04:28 MR. OAKES: Yes, Your Honor.

10:04:28 THE COURT: When we were last here, Mr. Breckenridge was on the stand. Is that agreed?

10:04:33 MS. PEEBLES: Yes.

10:04:34 THE COURT: Bring Mr. Breckenridge in please.

10:05:01 (Whereupon, the witness enters the courtroom).

10:05:07 THE CLERK: I'm going to swear you in again.

10:05:11 ROGER BRECKENRIDGE, Called as a witness, having been duly sworn, was examined and testified as follows:

10:05:18 THE CLERK: Please state your name for the record.

10:05:20 THE WITNESS: Roger Breckenridge.

10:05:22 THE CLERK: Spell your last name.

10:05:23 THE WITNESS: B-R-E-C-K-E-N-R-I-D-G-E.

10:05:27 THE CLERK: Have a seat please.

10:05:28 THE COURT: Is the camera on or off?

10:05:34 UNIDENTIFIED PERSON: It's off right now.

10:05:36 THE COURT: Turn it off.

10:05:37 UNIDENTIFIED PERSON: Your Honor, he
10:05:38 consented.

10:05:38 THE COURT: Mr. Breckenridge, I'm going to ask
10:05:39 you again today if you consent to having your testimony
10:05:42 audio and video taped.

10:05:44 THE WITNESS: It don't matter.

10:05:45 THE COURT: I need a yes or a no.

10:05:46 THE WITNESS: Yeah, go ahead.

10:05:47 THE COURT: Turn the camera back on. Mr.
10:05:49 Breckenridge, as I said to you yesterday, you are a
10:05:51 very soft spoken person. You need to speak loudly
10:05:53 enough today so the back wall can hear you talk. Do
10:05:56 you understand that?

10:05:57 THE WITNESS: Yes.

10:05:57 THE COURT: And all responses have to be
10:05:59 verbal. You understand that?

10:06:00 THE WITNESS: Yep.

10:06:01 THE COURT: Okay. Speak loudly.

10:06:04 THE WITNESS: Okay.

10:06:05 THE COURT: Yell if you have to, okay?

10:06:07 THE WITNESS: All right.

10:06:07 THE COURT: Okay, Ms. Bianco.

10:06:09 MR. OAKES: Your Honor, I believe my mike may
10:06:11 be on. Can I have it turned off in case I --

10:06:14 THE COURT: Yeah.

10:06:15 MR. OAKES: Thank you.

10:06:27 REDIRECT EXAMINATION

10:06:28 BY MS. BIANCO:

10:06:28 **Q.** Mr. Breckenridge, yesterday do you remember stating
10:06:32 that you had never met Michael Bohrer at the Medspar
10:06:36 Computer Store?

10:06:37 **A.** Yes, ma'am.

10:06:38 **Q.** And is that your sworn testimony here today?

10:06:41 **A.** Yep.

10:06:42 **Q.** Do you remember giving a statement to the Sheriff's
10:06:46 Department on March nineteenth, 2013 under oath?

10:06:52 **A.** What's that now?

10:06:54 **Q.** Do you remember giving a sworn statement to the
10:06:58 Sheriff's Department on March nineteenth, 2013 under oath?

10:07:04 **A.** I plead the Fifth Amendment on that.

10:07:07 **Q.** You're pleading the Fifth Amendment on whether you
10:07:09 gave a statement?

10:07:10 **A.** Um hum.

10:07:10 MS. BIANCO: Permission to treat the witness as
10:07:12 hostile, Your Honor.

10:07:15 THE COURT: Mr. Schwartz, do you need time to
10:07:20 speak to your client?

10:07:20 MR. SCHWARZ: Yes, Your Honor.

10:07:22 THE COURT: Brief five minutes.

10:10:29 (Whereupon, there was a recess.)

10:11:43 THE COURT: Before we go any further, this
10:11:44 morning the diaries were turned over to the Court for
10:11:47 its in camera review. The Court's not done that yet,
10:11:51 the Court anticipates either doing it later this
10:11:54 afternoon or tomorrow morning, so Ms. Peebles and Ms.
10:11:56 Bianco, you know that the diaries are now in the
10:11:58 possession of the Court. They were delivered this
10:12:00 morning for in camera review by the People.

10:12:03 MR. OAKES: Your Honor, and if I may clarify,
10:12:04 when you say diaries, there is a 1993 diary, I forget
10:12:08 if that's green or red, and a 1994 diary which is the
10:12:12 opposite color. It's one green, one red.

10:12:15 THE COURT: Okay.

10:12:15 MR. OAKES: Just for the record.

10:12:16 THE COURT: Okay.

10:12:17 MR. OAKES: Thank you.

10:12:19 THE COURT: Okay, Mr. Breckenridge, you're
10:12:21 back on the stand, you're under oath. Ms. Bianco, go

10:12:24 ahead.

10:12:25 MS. BIANCO: He had just pled the Fifth,
10:12:27 Judge, and --

10:12:28 THE COURT: He tried to invoke the Fifth.
10:12:30 Didn't do it properly. Do you want to ask the question
10:12:33 again regarding the sworn statement?

10:12:34 **Q.** Did you give a sworn statement to Investigator
10:12:41 Pietroski on March nineteenth, 2013? Did you give that
10:12:47 statement?

10:12:47 **A.** Yes, ma'am.

10:12:47 **Q.** And in that statement, did you state, "The only time
10:12:56 I ever met Michael Bohrer was four to five years ago when
10:13:01 he fixed Jennifer Wescott's computer. I was dating
10:13:05 Jennifer Wescott at the time." Did you say that?

10:13:08 **A.** Yes, ma'am.

10:13:10 MR. OAKES: Objection, Your Honor. Ms.
10:13:11 Bianco's reading -- never mind, Your Honor. It's
10:13:26 just -- never mind.

10:13:27 THE COURT: Okay.

10:13:30 **Q.** Did you state that under oath to the Sheriff's
10:13:35 Department on March nineteenth, 2013?

10:13:43 **A.** Yeah, yeah, ma'am. I -- I never met -- well,
10:13:49 Jennifer Wescott went over there, not me. I didn't have a
10:13:52 driver's license.

10:13:53 **Q.** So the -- what you stated, "The only time I ever met

10:13:58 Michael Bohrer was four to five years ago when he fixed
10:14:02 Jennifer Wescott's computer," you stated that you met
10:14:07 Michael Bohrer in this sworn statement, correct?

10:14:11 **A.** Yeah.

10:14:12 MR. OAKES: Objection, Your Honor, asked and
10:14:14 answered.

10:14:14 THE COURT: Sustained.

10:14:16 MS. BIANCO: I offer Defendant's Exhibit 49
10:14:19 into evidence.

10:14:22 THE COURT: Is it marked?

10:14:24 MS. BIANCO: It is.

10:14:25 THE COURT: Any objection?

10:14:26 MR. OAKES: The People do object, Your Honor.
10:14:29 She's -- she's asked him a question, she's trying to
10:14:32 impeach him. To put it in evidence, it appears the
10:14:35 defense is trying to accept every statement admitted
10:14:40 for the truth of the matters asserted therein, so we're
10:14:42 objecting to it being accepted.

10:14:43 THE COURT: But under the statute, she has a
10:14:45 right to introduce inconsistent sworn statements of her
10:14:48 own witness. You would agree to that, CPL 30.35,
10:14:52 60.35.

10:14:54 MR. OAKES: Does she have the right to -- Your
10:15:00 Honor, I believe she has the right --

10:15:01 THE COURT: For impeachment purposes only.

10:15:04 MR. OAKES: -- to cross him on it and ask him about it, but I don't believe that's to accept the document in evidence.

10:15:10 THE COURT: I'm going to receive it over the objection of the People. It's for impeachment purposes only. It's been marked?

10:15:18 MS. BIANCO: It has, forty-nine.

10:15:19 THE COURT: Forty-nine is moved in over the objection of the People.

(Defendant's Exhibit No. 49 was received in evidence).

10:15:23 **Q.** And you would agree that the sworn testimony you gave on March nineteen is different than the sworn testimony you gave in this very courtroom yesterday?

10:15:35 **A.** No, ma'am.

10:15:36 **Q.** How doesn't it -- explain to me how it -- how it doesn't disagree. You said you met Michael Bohrer -- never met him in the Medspar Computer Store. You said that.

10:15:48 **A.** Yeah. I said that. I never met him in that store.

10:15:51 **Q.** And in your statement, you said the only time you met him was when Jennifer was getting her computer fixed.

10:15:56 **A.** When Jennifer -- I never met him, Jennifer Wescott went over there and got her computer fixed. I didn't have a driver's license.

10:16:04 **Q.** So when you gave the statement that said the only

10:16:06 time you ever met Michael Bohrer, that was a lie.

10:16:09 MR. OAKES: Objection, Your Honor.

10:16:10 **A.** That was a lie.

10:16:11 THE COURT: Stop. What's your objection?

10:16:13 MR. OAKES: Objection. Asked and answered.

10:16:14 THE COURT: Asked and answered.
10:16:17 Argumentative. Move on.

10:16:20 **Q.** You also testified on cross-examination that if you
10:16:25 knew anything about Heidi Allen's death or disappearance
10:16:30 you would tell someone. Did you say that?

10:16:32 **A.** Yep. Yes, ma'am.

10:16:35 **Q.** Since March thirteenth, 2013, you've had a number of
10:16:41 visitors at -- in jail, is that correct?

10:16:46 **A.** Yeah.

10:16:47 **Q.** Who visited you?

10:16:49 **A.** When I been in prison?

10:16:52 **Q.** Yes.

10:16:52 **A.** My girlfriend Tammy and my sister Emmie.

10:16:57 **Q.** Did Jennifer Wescott ever visit you?

10:17:00 **A.** Nope. No, ma'am, never.

10:17:02 **Q.** Who did you speak to -- did you ever speak to
10:17:04 Jennifer on the phone?

10:17:05 **A.** No, ma'am.

10:17:07 **Q.** How about your former wife, your first wife, Tracey?

10:17:13 **A.** Yeah, a couple times.

10:17:15 **Q.** On the phone.

10:17:16 **A.** Yep.

10:17:16 **Q.** Did you have discussions about what you -- let me strike that. Did you also speak to your sister Emmie on the phone?

10:17:27 **A.** Yeah. I've talked to my sister Emmie all the time on the phone.

10:17:30 THE COURT: Can I have Emmie's last name please?

10:17:33 THE WITNESS: Emmie West.

10:17:34 **Q.** Did you have conversations with Emmie West about what you were reading in the paper about Heidi Allen?

10:17:41 **A.** Yeah, yeah. I've -- I keep her in touch with it.

10:17:45 **Q.** Did you say to Emmie to tell Jennifer Wescott to shut the fuck up about --

10:17:54 **A.** Yeah.

10:17:55 MR. OAKES: Objection.

10:17:56 **A.** Because she --

10:17:57 THE COURT: No, Mr. Breckenridge, be quiet.

10:18:00 MR. OAKES: Objection, Your Honor.

10:18:01 THE COURT: Based on?

10:18:02 MR. OAKES: She's impeaching him on an out of court statement, Your Honor.

10:18:08 THE COURT: Now I know you're going to disagree with me but you're impeaching your own

10:18:13 witness.

10:18:13 MS. BIANCO: I -- I'm not impeaching him, I'm
10:18:15 asking him a question. He didn't deny ever saying
10:18:17 this. This is just a question.

10:18:18 THE COURT: Ms. Bianco, you're very close.
10:18:20 Answer the question.

10:18:22 **Q.** Did you say to Emmie, your sister, on the phone, to
10:18:27 tell Jennifer Wescott to shut the fuck up about Heidi
10:18:31 Allen?

10:18:31 **A.** Yes, ma'am, I did, because she don't know nothing
10:18:34 what's going on, that's why. The girl's crazy.

10:18:39 **Q.** During the time you were with Jennifer Wescott, had
10:18:49 you been arrested for any domestic violence incidents?

10:18:53 MR. OAKES: Objection, Your Honor.

10:18:55 THE COURT: Stop, stop. What's your
10:18:56 objection?

10:18:57 MR. OAKES: Your Honor, this one is beyond the
10:18:59 scope of cross-examination. You gave her some more
10:19:05 latitude regarding information that developed Monday
10:19:07 night that she recently learned and is trying to
10:19:10 incorporate, but this is information available to the
10:19:12 defense for some time, and it's certainly well beyond
10:19:13 the scope.

10:19:14 THE COURT: Ms. Bianco?

10:19:15 MS. BIANCO: This is regarding a pattern of

10:19:17 threats made to not only this witness, to other
10:19:19 witnesses to shut up.

10:19:20 THE COURT: But you didn't bring -- you didn't
10:19:22 raise it on direct.

10:19:24 MS. BIANCO: Well, Judge, I'm looking at some
10:19:26 of the other things. I didn't realize this was such a
10:19:28 pattern, and now I'm looking at the things and I'm --

10:19:31 THE COURT: So it's going to go beyond what's
10:19:35 on direct because you didn't look into it more
10:19:37 carefully to begin with?

10:19:38 MS. BIANCO: No. We got disclosure yesterday
10:19:40 about other people knowing about his --

10:19:41 THE COURT: What's the relevance?

10:19:42 MS. BIANCO: -- admissions. I'm sorry, Judge?

10:19:45 THE COURT: What's the relevance?

10:19:46 MS. BIANCO: That he's made admissions and
10:19:48 then he's told people to shut up about those admissions
10:19:51 and he's threatened them.

10:19:55 THE COURT: I'll allow it, limited.

10:19:59 **Q.** Were you arrested numerous times for domestic
10:20:03 violence?

10:20:04 THE COURT: Hold it. I don't mean to cut you
10:20:05 off, but I think you just mischaracterized what he said
10:20:10 to Jennifer Wescott. You are implying to the Court
10:20:13 that he made the threat against her to shut the fuck

10:20:16 up.

10:20:17 MS. BIANCO: Yes.

10:20:17 THE COURT: He never said it was a threat
10:20:19 regarding any knowledge about Heidi Allen. Don't
10:20:22 mischaracterize testimony, okay?

10:20:26 MS. BIANCO: Yes, Your Honor.

10:20:28 **Q.** When you told Emmie to tell Jennifer Wescott to shut
10:20:33 the fuck up, what was she supposed to shut the fuck up
10:20:37 about?

10:20:38 **A.** I plead the Fifth Amendment on that.

10:20:43 THE COURT: You're not invoking it properly
10:20:45 for one thing. Do you want more time to speak to your
10:20:50 client?

10:20:51 MR. SCHWARTZ: Yes, Your Honor.

10:20:53 THE COURT: Five minutes.

10:28:16 (Whereupon, there was a recess).

10:28:16 THE COURT: Okay, we're back on the record.
10:28:18 Mr. Breckenridge -- actually, Ms. Bianco, ask the
10:28:22 question again please.

10:28:23 MS. BIANCO: Could I have the question read
10:28:25 back?

10:28:25 THE COURT: Absolutely.

(Whereupon, the court reporter read back the
10:29:39 last question).

10:29:39 THE COURT: You agree that was the question?

10:29:41 MS. BIANCO: That was the question.

10:29:42 **A.** Because she didn't know what she was talking about.

10:29:44 **Q.** But what particularly were you asking her to shut up about?

10:29:48 **A.** About the Heidi Allen because she don't know nothing about it.

10:29:51 **Q.** What did you tell Emmie specifically to tell Jennifer?

10:29:57 **A.** I told Jennifer --

10:29:59 MR. OAKES: Objection, Your Honor. Asked and answered.

10:30:01 **A.** -- to shut the fuck up because --

10:30:02 THE COURT: Stop, stop. Sustained.

10:30:06 **Q.** You had told Jennifer Wescott in the past not to bring this subject up, is that right?

10:30:17 **A.** Yeah because she don't --

10:30:20 MR. OAKES: Objection, Your Honor.

10:30:21 **A.** Why bring something up that --

10:30:23 THE COURT: Stop. I'm sorry, Mr. Breckenridge.

10:30:25 MR. OAKES: I'm sorry. Objection. Leading, Your Honor.

10:30:27 THE COURT: I'll allow it.

10:30:30 **Q.** You had told Jennifer Wescott not to bring this subject up in the past, haven't you?

10:30:38 **A.** No, not in the past, just since I have been locked up.

10:30:43 **Q.** When you were living with Jennifer Wescott, were you in physical altercations with her to keep her quiet about Heidi Allen and what she was saying?

10:30:57 **A.** No, ma'am.

10:30:58 **Q.** You were in physical altercations.

10:31:05 MR. OAKES: Objection as to relevance.

10:31:06 **A.** No, ma'am.

10:31:06 THE COURT: The second question is were you in physical altercations with her?

10:31:09 MS. BIANCO: Yes.

10:31:09 THE COURT: So you're withdrawing the leading aspect of the Heidi Allen question?

10:31:13 MS. BIANCO: Yes. Were you in physical -- had physical confrontations with her.

10:31:16 THE COURT: What's the relevance?

10:31:17 MS. BIANCO: Well, this is regarding what I anticipate Jennifer Wescott will say about why she was beaten. I'm giving him an opportunity to respond.

10:31:29 THE COURT: I'm going to sustain the objection.

10:31:31 THE WITNESS: She was never beaten.

10:31:32 THE COURT: I'm going to sustain the objection.

10:31:34 THE WITNESS: Never beaten by me.

10:31:35 THE COURT: Be quiet, Mr. Breckenridge.

10:31:38 **Q.** Do you know a person -- strike that. Did you also
10:31:46 relay messages through your sister to tell Jessica Howard
10:31:54 to shut the fuck up?

10:31:56 MR. OAKES: Objection, leading.

10:31:57 THE COURT: Sustained.

10:31:59 **Q.** Did you relay any other messages to your sister
10:32:03 Emmie to tell other people for you?

10:32:06 **A.** No.

10:32:07 **Q.** Do you know a person named Cynthia Taylor?

10:32:14 **A.** No, ma'am.

10:32:15 **Q.** Do you know a person named James Abbott?

10:32:19 **A.** No, ma'am.

10:32:20 **Q.** You were married to a Tracey Breckenridge, correct?

10:32:26 **A.** Yep.

10:32:26 **Q.** Did you talk to Tracey Breckenridge about a drug
10:32:34 deal at the D&W?

10:32:38 MR. OAKES: Objection, Your Honor.

10:32:39 **A.** No, ma'am.

10:32:39 THE COURT: Stop. What's your objection?

10:32:41 MR. OAKES: Leading, foundation.

10:32:44 THE COURT: I'll allow it.

10:32:47 **A.** No, ma'am.

10:32:48 **Q.** Did you talk to Tracey Breckenridge about what

10:32:52 happened to Heidi Allen?

10:32:53 **A.** No, ma'am.

10:32:54 **Q.** When you were interviewed by the police on this
10:33:00 March thirteenth, 2013 statement that we spoke about, what
10:33:05 were you told in regards to your status as a suspect in
10:33:08 this case?

10:33:09 **A.** I wasn't.

10:33:10 **Q.** You were not a suspect?

10:33:12 **A.** No.

10:33:14 **Q.** On cross-examination you testified that you waited
10:33:25 to get involved with Jennifer Wescott until she was
10:33:30 eighteen.

10:33:30 **A.** Yep.

10:33:31 **Q.** Did you ever try to sell Jennifer Wescott to pay for
10:33:37 a drug debt to a Bob Zacalla (ph)?

10:33:40 **A.** No.

10:33:41 MR. OAKES: Objection, Your Honor.

10:33:42 THE COURT: Don't answer. What's the
10:33:43 relevance?

10:33:44 MS. BIANCO: Judge, I believe this goes to
10:33:46 what he is willing to do to women.

10:33:49 THE COURT: I'm going to sustain the
10:33:50 objection. I think you're fishing. Sustained. You
10:33:57 don't have to answer the question.

10:34:02 **Q.** You talked on cross-examination about your

10:34:04 friendship with James Steen, do you remember that?

10:34:07 **A.** Yeah.

10:34:07 **Q.** Did you ever visit James Steen at his cabin on Route
10:34:12 11?

10:34:14 **A.** No.

10:34:15 **Q.** Never?

10:34:16 **A.** Naw, not on Route 11.

10:34:18 **Q.** Pardon?

10:34:18 **A.** No.

10:34:19 MS. BIANCO: No further questions.

10:34:25 THE COURT: Any recross, Mr. Oakes?

10:34:27 MR. OAKES: No thank you, Your Honor.

10:34:28 THE COURT: No thank you?

10:34:29 MR. OAKES: No thank you.

10:34:30 THE COURT: Okay. As we talked about with Mr.
10:34:34 Steen which is probably going to be an issue for Mr.
10:34:36 Breckenridge's attorney, do we anticipate calling him
10:34:39 in any other capacity during this proceeding let's say
10:34:43 this week?

10:34:44 MR. OAKES: The People do not, Your Honor.

10:34:45 THE COURT: Okay.

10:34:47 MS. PEEBLES: Not that I believe, Your Honor.

10:34:48 THE COURT: So the same thing, status with Mr.
10:34:50 Steen, Mr. Breckenridge can go back to the Department
10:34:53 of Corrections?

10:34:53 MS. PEEBLES: Yes.

10:34:54 MR. OAKES: Yes, Your Honor. Thank you.

10:34:55 THE COURT: Thank you, Mr. Breckenridge. Ms.
10:35:04 Peebles or Ms. Bianco, your next witness?

10:35:08 MS. PEEBLES: The defense calls Michael
10:35:12 Bohrer.

THE COURT: Michael Bohrer?

10:36:06 MS. PEEBLES: Yes.

10:36:06 THE COURT: Mr. Oakes and Mr. Moody, was an
10:36:08 order regarding Mr. Thibodeau given to the clerk's
10:36:11 office?

10:36:12 MR. MOODY: I believe it -- Amy, I have a note
10:36:15 here that Amy took one.

10:36:57 THE CLERK: Please stand. Please raise your
10:37:06 right hand, put your left on the Bible.

10:37:10 MICHAEL BOHRER, Called as a witness, having
10:37:21 been duly sworn, was examined and testified as follows:

10:37:21 THE CLERK: Please state your name for the
10:37:23 record.

10:37:23 THE WITNESS: Michael Bohrer.

10:37:24 THE CLERK: Please spell your last name.

10:37:26 THE WITNESS: B-O-H-R-E-R.

10:37:31 THE CLERK: Okay, please have a seat.

10:37:34 THE COURT: Mr. Bohrer, have a seat please.
10:37:36 Mr. Bohrer, before we get going, I'm going to ask you

10:37:38 do you consent to have your testimony audio and
10:37:40 videotaped?

10:37:42 THE WITNESS: No.

10:37:43 THE COURT: Okay. That's fine.

10:37:49 DIRECT EXAMINATION

10:37:49 BY MS. PEEBLES:

10:37:50 **Q.** Mr. Bohrer, what was in the briefcase that you
10:37:52 brought into court today? What's in the briefcase?

10:37:55 MR. MOODY: Objection, Judge, relevance.

10:37:59 MS. PEEBLES: I think the Judge wants to know
10:38:00 and I'd like to know.

10:38:01 THE COURT: No, I don't want to know. I just
10:38:03 don't want it on the witness stand. I'll sustain the
10:38:05 objection.

10:38:05 MS. PEEBLES: Well, does it have anything to
10:38:07 do with the Heidi Allen case?

10:38:09 MR. MOODY: Judge --

10:38:11 THE COURT: If you want to -- did you issue a
10:38:13 subpoena duces tecum for his documents?

10:38:16 MS. PEEBLES: No, I didn't, Judge, but he
10:38:18 brought them here in court.

10:38:19 THE COURT: Sustained then.

10:38:20 **Q.** Are you a Canadian citizen?

10:38:22 **A.** I don't know if I'm dual or not.

10:38:26 **Q.** You don't know?

10:38:28 **A.** I was naturalized at six.

10:38:32 **Q.** Were you born in Canada?

10:38:34 **A.** Yes. I was born in Quebec.

10:38:37 **Q.** So that's where you're from, Canada?

10:38:40 **A.** I was born there, yep.

10:38:42 **Q.** You have been there recently?

10:38:44 **A.** Not since I was adopted.

10:38:49 **Q.** Now, you have dual citizenship?

10:38:54 **A.** I spoke with a Canadian at one time and he says he
10:39:01 doesn't see why I wouldn't be and I told him I was
10:39:04 naturalized.

10:39:06 **Q.** When were you --

10:39:06 **A.** And he says well, Canada still recognizes -- should
10:39:11 still recognize you.

10:39:13 **Q.** When were you naturalized? When did you --

10:39:17 MR. MOODY: Your Honor, I'm going to object.
10:39:18 What is the relevance of this?

10:39:19 THE COURT: Where are we going with this?

10:39:20 MS. PEEBLES: It's relevant, Your Honor.

10:39:21 THE COURT: How? You can say it's relevant.
10:39:22 Tell me how it's relevant.

10:39:24 MS. PEEBLES: It's relevant to his
10:39:25 credibility. I have other things that I'm going to
10:39:28 introduce about how he wound up in Oswego County.

10:39:30 MR. MOODY: So she's impeaching her own

10:39:33 witness now?

10:39:34 MS. PEEBLES: No. I'm asking him questions
10:39:35 about his background which I'm entitled to do despite
10:39:39 the fact --

10:39:40 MR. MOODY: I want the relevance of what his
10:39:42 nationality is.

10:39:42 THE COURT: What's the relevance of whether
10:39:44 he's a dual citizen or not a dual citizen?

10:39:47 MS. PEEBLES: He may not be a US citizen and
that's what I'm questioning him about.

THE COURT: Why is that relevant?

MS. PEEBLES: Because he has a felony
10:39:52 conviction out of Wisconsin.

10:39:52 THE COURT: Why's that relevant to what he may
10:39:54 or may not know about Heidi Allen?

10:39:56 MS. PEEBLES: Because, Your Honor, it was for
10:39:59 unlawful imprisonment of a woman.

10:40:00 MR. MOODY: So now we're impeaching our own
10:40:02 witness again.

10:40:03 THE COURT: I'm going to sustain the
10:40:05 objection. I don't see whether he's a dual citizen or
10:40:08 not is relevant.

10:40:19 **Q.** Do you have a history of violence against women?

10:40:22 MR. MOODY: Objection, Judge, relevance.

10:40:25 THE COURT: Ms. Peebles, he's your witness.

10:40:26 MS. PEEBLES: I'm asking him if he did, I'm
10:40:29 not impeaching him. He has an opportunity to say yes
10:40:31 or no. How am I impeaching him?
10:40:32 THE COURT: Answer the question, Mr. Bohrer.
10:40:35 **A.** Can you repeat the question?
10:40:37 **Q.** Do you have a history of violence against women?
10:40:42 MR. MOODY: Objection, foundation. Can we
10:40:43 have a time frame, can we have anything?
10:40:45 THE COURT: I'll go with time frame. Do you
10:40:47 have a time frame, Ms. Peebles?
10:40:49 MS. PEEBLES: Yeah. Just for the record, I
10:40:54 don't have to make my witness a credible, wonderful
10:40:59 person because I call them.
10:41:00 THE COURT: I'm not denying that, Ms. Peebles,
10:41:03 but you cannot attack your own witness the minute he
10:41:06 sits down on the witness stand.
10:41:07 MS. PEEBLES: I'm not attacking him.
10:41:09 THE COURT: You're backdooring the attack, Ms.
10:41:12 Peebles. Answer the question when or give a time frame
10:41:14 for Mr. Bohrer.
10:41:15 **Q.** Mr. Bohrer, between 1981 and 1996, do you have a
10:41:21 history of violence against women?
10:41:24 **A.** I don't consider it as violence.
10:41:29 **Q.** Well, what do you mean by that?
10:41:32 **A.** I didn't hit any woman.

10:41:38 **Q.** Do you date a female by the name of Tina?

10:41:42 **A.** Yep.

10:41:43 MR. MOODY: I'm going to object where we're going with this. Are we going to -- are we going to establish his violent history or are we going to ask him what he knows about this case?

10:41:53 THE COURT: What is relevant about his history? He is not on trial right now. The question is what does he or does he not know about the Heidi Allen case.

10:42:02 MS. PEEBLES: Just so I'm clear so I know what I'm allowed to question my own witness on, is the Court restricting me to simply asking him only about the Heidi Allen case and nothing more? I want it clear.

10:42:12 THE COURT: Are you trying to prosecute your own witness, Ms. Peebles?

10:42:15 MS. PEEBLES: Am I trying to prosecute them?

10:42:17 THE COURT: Yes.

10:42:17 MS. PEEBLES: Well, if I had the authority to I would, but no.

10:42:21 THE COURT: It sounds like you're putting him on trial, Ms. Peebles.

MS. PEEBLES: Judge, I'm trying --

10:42:24 THE COURT: The relevant issue to this case is

10:42:25 what he may or may not have said or what is or not in

10:42:28 his knowledge regarding Heidi Allen. How is whether or
10:42:32 not he was or was not violent toward women in a time
10:42:35 frame of fifteen years relevant to what he knows about
10:42:37 Heidi Allen?

10:42:39 MS. PEEBLES: Well, Your Honor, I think it's
10:42:41 obvious that the theory of the government is that she
10:42:45 was abducted and kidnapped and murdered, so that would
10:42:48 be a violent act, and I am trying to establish some
10:42:52 background on Mr. Bohrer.

10:42:54 THE COURT: I'm going to deny it.

10:42:55 MS. PEEBLES: Okay, so --

10:42:59 THE COURT: I'm going to sustain the
10:43:00 objection. Excuse me.

10:43:01 **Q.** All right, when did you arrive in Oswego County, Mr.
10:43:05 Bohrer?

10:43:06 **A.** Fall of 1991 I believe.

10:43:11 **Q.** And when you arrived in Oswego County in 1991, where
10:43:15 were you living.

10:43:17 **A.** On -- when I arrived?

10:43:22 **Q.** Yeah, when you arrived, when you arrived in Oswego
10:43:24 County in 1991, where did you move to? Where did you live?

10:43:28 **A.** Well, I'm -- I'm not sure I understand the question
10:43:40 because I originally came to be best man for a wedding at
10:43:51 Spinners.

10:43:53 **Q.** Okay.

10:43:54 THE COURT: At where?
10:43:55 THE WITNESS: Spinners.
10:43:55 THE COURT: Okay.
10:43:56 **Q.** Now Spinners?
10:43:57 **A.** In New Haven.
10:43:58 **Q.** Okay, is that where you went when you first arrived
10:44:01 in Oswego County is Spinners?
10:44:03 **A.** Yes.
10:44:04 **Q.** Were you living at Spinners in 1991?
10:44:07 **A.** Eventually, because after the wedding I -- since I
10:44:12 was discharged from IBM, I thought well, fishing, whatever,
10:44:22 you know, I got the rest of my life to figure out what I
10:44:26 want to do.
10:44:27 **Q.** Okay, so you -- you were in Wisconsin before you
10:44:32 moved to Oswego County, right?
10:44:37 **A.** Yeah, but not directly.
10:44:41 **Q.** What do you mean by that?
10:44:45 **A.** I came to Oswego County in ninety-one.
10:44:51 **Q.** Okay.
10:44:52 **A.** I left Milwaukee in eighty-one.
10:44:54 **Q.** Okay, and oh, so where were you --
10:44:58 **A.** I was working for IBM Research and Development for
10:45:01 ten years.
10:45:01 **Q.** Between 1981 and the time you moved to Oswego
10:45:05 County?

10:45:05 **A.** Yep.

10:45:08 **Q.** Okay, so when you moved to Oswego County in 1991,
10:45:11 you were retired.

10:45:13 **A.** Correct.

10:45:14 **Q.** Now, do you remember -- did you -- did you live at
10:45:18 Spinners in 1991 or were you saying you were just there for
10:45:23 a wedding so I'm clear?

10:45:24 **A.** No. I only stayed at Spinners for that weekend of
10:45:30 the wedding. I might have stayed the rest of the week or
10:45:37 went back.

10:45:38 **Q.** Okay, so where did you go after you went to this
10:45:40 wedding?

10:45:41 **A.** Few days later.

10:45:42 **Q.** Where did you move to in Oswego County after you
10:45:45 went to that wedding?

10:45:46 **A.** Where did I go?

10:45:49 **Q.** Yeah. Where did you move to -- so you weren't
10:45:51 living at Spinners, but where did you move, where were you
10:45:54 staying overnight, where were you living?

10:45:55 **A.** Back -- back to Duchess County where I lived.

10:45:58 **Q.** Duchess County?

10:46:00 **A.** Yeah, that's where IBM is.

10:46:02 **Q.** Okay, when did you move to Oswego County? I guess I
10:46:05 thought you told me --

10:46:06 **A.** After the wedding and I hung out and met a few

10:46:09 people and said well, this would be a good place to move,
10:46:13 it's cheaper, now that I'm on a fixed income. I thought
10:46:19 I'd take my crack at fishing.
10:46:25 **Q.** So was that 1991?
10:46:27 **A.** I had an idea for wetland farming to help increase
10:46:33 wetlands that were being depleted.
10:46:38 **Q.** Okay, so 1991 you moved to Oswego County? Do you
10:46:45 know when you moved to Oswego County?
10:46:48 **A.** Yes, the fall.
10:46:50 **Q.** Of 1991.
10:46:51 **A.** Yes.
10:46:52 **Q.** All right, is that when you moved into Spinners?
10:46:56 **A.** No.
10:46:57 **Q.** Where were you living when you actually moved to
10:46:59 Oswego County?
10:47:00 **A.** I had acquired a place to live from a person that
10:47:07 lived in New Haven that owned a four-bedroom ranch house.
10:47:11 **Q.** Okay.
10:47:12 **A.** And he agreed to rent it to me.
10:47:15 **Q.** And how long did you stay there?
10:47:17 **A.** So I went back to Beacon, rented a U-haul and came
10:47:23 back to New Haven, filled the house up with my furniture
10:47:27 and met the neighbors, and that was -- that was it, you
10:47:36 know.
10:47:37 **Q.** So how long did you stay at that apartment where you

10:47:40 were living when you moved in there in 1991?

10:47:42 **A.** It was a four-bedroom ranch house.

10:47:45 **Q.** How long were you at the four-bedroom ranch house?
10:47:49 You were renting a room?

10:47:52 **A.** Maybe -- renting a room?

10:47:58 **Q.** Were you -- were you occupying the whole house?

10:48:00 **A.** I wasn't renting a room, I was renting the whole
10:48:03 house.

10:48:03 **Q.** Oh, okay, I thought you moved in with him, I'm
10:48:05 sorry, I misunderstood.

10:48:06 **A.** Moved in with who?

10:48:08 **Q.** I misunderstood what you said.

10:48:09 **A.** There was a gentleman that frequented Spinners that
10:48:13 owned the four-bedroom ranch house on Mason Road.

10:48:19 **Q.** And you lived there by yourself?

10:48:21 **A.** And I lived thereby myself.

10:48:23 **Q.** Gotcha, okay, so how long did you stay there?

10:48:25 **A.** I believe a little over two years, maybe three, two
10:48:32 I guess.

10:48:33 **Q.** And where were --

10:48:35 **A.** Definitely two winters.

10:48:37 **Q.** Where were you living in April of 1994?

10:48:40 **A.** Spinners.

10:48:42 **Q.** Okay, and Spinners is located where?

10:48:45 **A.** On six and 104B.

10:48:51 **Q.** And how far is Spinners from the D&W Convenience Store?

10:48:56 **A.** Probably less than a half a mile.

10:48:59 **Q.** So you're familiar with where -- you were familiar back then with where the D&W Convenience Store was?

10:49:04 **A.** Sure.

10:49:05 **Q.** And did you go to the D&W Convenience Store?

10:49:08 **A.** Sure.

10:49:09 **Q.** Did you know Heidi Allen?

10:49:11 **A.** Not really.

10:49:13 **Q.** Did she make you sandwiches?

10:49:15 **A.** Yes.

10:49:16 **Q.** So you knew who she was?

10:49:19 **A.** Just -- I mean she didn't have a name tag or anything like that. I didn't really know her name.

10:49:33 MR. MOODY: I'm sorry, I can't understand him while he's coughing.

10:49:36 THE COURT: Do you need water?

10:49:39 THE WITNESS: I'm getting it.

10:49:40 MR. MOODY: If you can have him repeat the answer once he's done.

10:49:49 THE WITNESS: What was the question again please?

10:49:53 MS. PEEBLES: I'd have to have it read back.

(Whereupon, the court reporter read back the

10:50:08 last question and answer).
10:50:08 **A.** Yep. In fact out of a hundred waitresses at
10:50:16 convenience stores, diners or whatever, none of them wear
10:50:20 name tags, and I probably maybe know two or three names to
10:50:24 this day.
10:50:26 **Q.** But you --
10:50:27 **A.** It's not uncommon for me not to know somebody's
10:50:30 name.
10:50:30 **Q.** Right.
10:50:30 **A.** Because I don't get personal with people in the
10:50:33 stores.
10:50:33 **Q.** Okay, but you --
10:50:34 **A.** And you can ask any one of them.
10:50:36 **Q.** But you knew who she was.
10:50:38 **A.** I was aware of who she was, she made my sandwiches.
10:50:41 **Q.** Okay, fair enough. How often would you go in there
10:50:44 to get sandwiches?
10:50:46 **A.** Probably every day sometimes. Not necessarily
10:50:52 because she was there.
10:50:53 **Q.** So I -- you were familiar --
10:50:56 **A.** Just a convenience store.
10:50:58 **Q.** And you were familiar with the layout of the
10:51:00 convenience store?
10:51:01 **A.** I'm not blind.
10:51:02 **Q.** And did you see where the work schedule was hanging

10:51:04 at the convenience store?

10:51:05 **A.** No.

10:51:06 **Q.** You never -- and you never said anything about it to
10:51:08 anybody about the work schedule?

10:51:11 **A.** When?

10:51:14 **Q.** Did you -- I guess my question is did you know or
10:51:20 observe where the work schedule was hanging at the D&W?

10:51:23 **A.** No, never.

10:51:25 **Q.** Did you ever tell anybody that you knew where the
10:51:27 work schedule was?

10:51:28 **A.** No.

10:51:28 **Q.** Did you ever write it down and hold it in any kind
10:51:32 of a box?

10:51:32 MR. MOODY: Objection, Judge, leading.

10:51:36 THE COURT: I'll allow it.

10:51:39 **A.** Hum?

10:51:40 **Q.** Did you ever --

10:51:41 THE COURT: Ask the question again.

10:51:43 **Q.** Did you ever write that information down and keep it
10:51:45 in a box?

10:51:46 THE COURT: Before he answers the question,
10:51:47 I'm not sure what information -- are you looking for a
10:51:49 specific schedule or the alleged location of the
10:51:52 schedule?

10:51:53 MS. PEEBLES: The alleged location of the

10:51:55 schedule.

10:51:55 THE COURT: Okay.

10:51:59 **A.** If you are referring to anything that was in the box 10:52:02 that I willingly gave over to the investigators, I -- I'd 10:52:11 have to look at the document to refresh my memory of what 10:52:15 it is you're talking about.

10:52:17 **Q.** Okay, I'll get back to that. Well, why don't we 10:52:21 talk about the box. Now, at some point did you become 10:52:26 obsessed with the Heidi Allen case?

10:52:28 MR. MOODY: Objection, Judge, 10:52:30 characterization.

10:52:31 THE COURT: I'll allow it.

10:52:33 **A.** Ask the question please.

10:52:35 **Q.** At some point after the abduction of Heidi Allen in 10:52:39 1994, did you become obsessed with the case?

10:52:42 **A.** I wouldn't say obsessed. Outraged.

10:52:47 **Q.** Okay, you mention this box that you willingly turned 10:52:52 over. Was that after you were interviewed by Investigator 10:52:56 Pietroski and Investigator Johnson at the Mapleview Diner?

10:53:01 **A.** You're speaking of the -- from a year ago or two 10:53:06 years ago?

10:53:06 **Q.** Yeah, March twenty-first of 2013.

10:53:08 **A.** Yes.

10:53:09 **Q.** Actually did you tell them about that box?

10:53:12 **A.** Yes. They weren't aware of it, and I said I'll tell

10:53:17 you what, I'll turn you over everything I have dug up.

10:53:19 **Q.** And in fact did you take them to where you lived?

10:53:23 **A.** Yes.

10:53:23 **Q.** And --

10:53:31 MS. PEEBLES: Pardon me for a moment.

10:53:32 THE COURT: Absolutely.

10:53:33 (Whereupon, there was a pause in the
10:53:44 proceeding.)

10:53:44 THE COURT: This is March of thirteen, Ms.
10:53:45 Peebles?

10:53:46 MS. PEEBLES: March, yeah, of 2013.

10:53:48 THE COURT: Thank you.

10:53:49 MS. PEEBLES: March twenty-first. May I
10:54:02 approach the witness?

10:54:03 THE COURT: Yes, absolutely.

10:54:04 **Q.** I'm going to hand you what's been marked as Exhibit
10:54:09 51A and ask if you can take a look at that and tell me --

10:54:15 THE COURT: That's the Defense Exhibit 51?

10:54:17 MS. PEEBLES: Defense Exhibit 51A.

10:54:19 **A.** Yeah, that's where I was for less than a year.

10:54:21 **Q.** Is that a fair and accurate depiction of where you
10:54:24 lived?

10:54:24 **A.** Yeah.

10:54:24 MS. PEEBLES: At this time I'd like to move
10:54:26 51A into evidence.

10:54:28 THE COURT: Can you give me a time frame when
10:54:29 he allegedly lived there?
10:54:31 MS. PEEBLES: March twenty-first of 2013.
10:54:33 THE COURT: So this was where he was living
10:54:36 when this box was turned over?
10:54:37 MS. PEEBLES: When he went with Investigator
10:54:39 Pietroski and Johnson, yes.
10:54:40 THE COURT: Any objection?
10:54:42 MR. MOODY: Can I see the exhibit?
10:54:56 THE COURT: Ms. Peebles, does it have an
10:54:58 address?
10:54:59 MS. PEEBLES: I'm going to ask him that.
10:55:01 THE COURT: Okay.
10:55:01 MR. MOODY: Judge, I'm not sure I get the
10:55:04 relevance of where he was living in March of 2013, so
10:55:06 my objection isn't necessarily to the -- to the exhibit
10:55:11 themselves, I guess 51A through C or just 51A.
10:55:15 MS. PEEBLES: I'm going to introduce all of
10:55:17 them.
10:55:17 MR. MOODY: I'm not sure what the relevance is
10:55:19 of where he was living in March of 2013.
10:55:21 THE COURT: What's the relevance, Ms. Peebles?
10:55:22 MS. PEEBLES: It's where the box was, and they
10:55:24 went, and these are pictures that the investigator took
10:55:27 when they collected the box of memorabilia surrounding

10:55:30 Heidi Allen.

10:55:31 THE COURT: What's the relevance? What's the difference if they picked them up at McDonald's or at his house?

10:55:35 MS. PEEBLES: I think it's important for the Court to see exactly where it was in his living quarters. I'm providing -- I just want to provide the Court with information.

10:55:43 MR. MOODY: If the issues are on the box, we got the box here.

10:55:48 MS. PEEBLES: I have the contents of the box. I'm getting to that.

10:55:50 THE COURT: I'm going to sustain the objection. I don't see the relevance of where the box comes from.

10:55:54 **Q.** Where were you living? What was the address of that place where you were residing when you went with investigators on March twenty-first of 2013?

10:56:04 **A.** I think it was 257 Bengal Road.

10:56:10 **Q.** And where is Rice Road in connection with Bengal Road?

10:56:13 **A.** Not far from that address.

10:56:15 **Q.** Do you know how far?

10:56:17 **A.** Maybe a mile.

10:56:22 **Q.** A mile?

10:56:23 **A.** Well, less than a mile.

10:56:27 MS. BIANCO: Judge, perhaps if he could move
10:56:28 the microphone closer. We're having a hard time
10:56:32 hearing.

10:56:32 THE WITNESS: Sorry.

10:56:33 THE COURT: That better?

10:56:33 THE WITNESS: Yeah. It's just that it's right
10:56:35 in my face. Is that all right?

10:56:39 **Q.** And describe your -- what you were living in at that
10:56:42 address on Bengal Road.

10:56:44 **A.** I was living in a camper.

10:56:47 **Q.** And the box that you turned over to investigators,
10:56:51 where was that located when you took them there to give
10:56:53 them that information?

10:56:53 **A.** In the front.

10:56:57 **Q.** In the front?

10:56:59 **A.** Cab part of the camper.

10:57:02 **Q.** On the passenger seat?

10:57:04 **A.** I don't know -- no, it was kind of like in between.
10:57:09 I had all the -- it's like a catchall closet when you're
10:57:12 camping till you got to go somewhere.

10:57:16 **Q.** If I show you a photograph, would it refresh your
10:57:19 recollection of where exactly the box was?

10:57:21 **A.** Sure.

10:57:25 **Q.** Handing you what's been marked as Defendant's

10:57:27 Exhibit B, I'll ask you to take a look at that.

10:57:30 THE COURT: B or D?

10:57:32 MS. PEEBLES: B.

10:57:33 THE COURT: Thank you.

10:57:36 MR. MOODY: Did she say defense?

10:57:38 THE COURT: Defense Exhibit B, 51B.

10:57:42 MS. PEEBLES: 51B.

10:57:44 MR. MOODY: I thought you said B. I thought
10:57:48 we were using letters.

10:57:48 **Q.** Does that refresh your recollection, Mr. Bohrer,
10:57:50 about where the box was?

10:57:51 **A.** Well, I'm quite aware of my camper. I'm just
10:57:59 validating that yes, that's my camper.

10:58:01 **Q.** Okay, and the box in the picture, where was it?

10:58:04 **A.** I don't know. About the only thing I could make out
10:58:12 was the air conditioner and the window, the door of the
10:58:20 passenger side. It's not a very good photo. Can I look at
10:58:24 it again?

10:58:25 **Q.** Sure.

10:58:34 **A.** Yep. I had pulled it and then the officer told me
10:58:39 to set aside so he can take a picture before I took it out.

Q. Okay.

10:58:44 **A.** But that is not the original position when that door
10:58:48 was opened.

10:58:48 **Q.** Okay, so but it was in the front cab part of the RV?

10:58:52 **A.** Right.

10:58:52 **Q.** When -- when Heidi Allen was abducted, were you ever
10:59:13 interrogated by sheriff's investigators?

10:59:17 **A.** I was questioned.

10:59:18 **Q.** And when was that?

10:59:20 **A.** Less than two weeks.

10:59:31 **Q.** Less than two weeks from when? I'm sorry.

10:59:35 **A.** After Heidi was abducted.

10:59:37 **Q.** And did you drive yourself down to the Sheriff's
10:59:41 Department or did they come and get you?

10:59:43 **A.** No, I think they pulled me over.

10:59:45 **Q.** Pulled you over for what?

10:59:47 **A.** To question me.

10:59:48 **Q.** Were you driving when they pulled you over?

10:59:50 **A.** I believe so.

10:59:51 **Q.** And you -- were you -- did you commit any traffic
10:59:55 infractions for them to pull you over?

10:59:57 **A.** No.

10:59:59 **Q.** Do you remember what road you were on when they
11:00:01 pulled you over?

11:00:01 **A.** I believe it was -- it was six, on the other side of
11:00:09 104B from the Spinners.

11:00:12 **Q.** And at that time you were still living at Spinners?

11:00:15 **A.** Hah?

11:00:16 **Q.** At that time you were still living at Spinners?

11:00:18 **A.** I believe so.
11:00:18 **Q.** Okay, so when they pulled you over, do you recall
11:00:21 who it was that pulled you over?
11:00:22 **A.** That's a little fuzzy. I don't know if it was Bobby
11:00:27 Wheeler or a deputy. I don't remember. I think it was
11:00:36 Bobby Wheeler.
11:00:36 **Q.** Were there two of them, two deputies that pulled you
11:00:39 over or just one?
11:00:40 **A.** I don't have that much detail in my memory of it.
11:00:50 It was a casual encounter and I answered all their
11:00:54 questions.
11:00:54 **Q.** So when they took you down to where, Oswego County
11:00:58 Sheriff's Department? Is that where they took you?
11:01:00 **A.** No.
11:01:00 **Q.** Where'd they take you?
11:01:02 **A.** They never took me anywhere.
11:01:04 **Q.** Did you tell Investigator Pietroski and Investigator
11:01:08 Johnson that you were brought down to the Sheriff's
11:01:10 Department?
11:01:10 MR. MOODY: Objection, Judge, leading.
11:01:12 THE COURT: Please don't answer, sir. What's
11:01:14 the objection, sir?
11:01:15 MR. MOODY: It's leading. Did you tell.
11:01:17 THE COURT: It's harmless leading. I'll allow
11:01:20 it.

11:01:22 **Q.** You can answer.

11:01:24 **A.** You want to repeat the question?

11:01:25 **Q.** Sure. I'm sorry.

11:01:26 (Whereupon, the court reporter read back the last question). 11:01:41

11:01:41 THE COURT: Before you -- can you give the Court at least a time when this alleged statement was made to Pietroski and this other investigator? 11:01:43 11:01:46

11:01:50 MS. PEEBLES: Yes.

11:01:51 THE COURT: Thank you.

11:01:51 MS. PEEBLES: On March twenty-first of 2013.

11:01:53 THE COURT: Thank you.

11:01:53 **Q.** When you spoke to Investigator Pietroski and Investigator Johnson. 11:01:56

11:01:57 **A.** Um hum.

11:01:57 **Q.** Did you tell them that they brought you down to the Sheriff's Department? 11:02:00

11:02:01 **A.** Not on the first questioning of me, no.

11:02:06 **Q.** How many times were you questioned, let's settle that. So two weeks after she ends up missing, you're questioned and you're questioned where? 11:02:10 11:02:15

11:02:17 **A.** I think three to four. I'm sure they have an accurate record of it. 11:02:24

11:02:26 **Q.** Don't be so sure.

11:02:29 **A.** Well, I would hope their records would be accurate.

11:02:33 **Q.** Where -- where were you when they were questioning
11:02:38 you?
11:02:39 MR. MOODY: Okay, which time are we talking
11:02:41 about?
11:02:42 **Q.** That particular time, I'm still on the time when
11:02:44 they pulled you over, two weeks after.
11:02:45 THE COURT: Okay.
11:02:46 **A.** Less than two weeks.
11:02:47 **Q.** Less than two weeks?
11:02:50 **A.** And where did they take me you're asking me?
11:02:54 **Q.** Where were you? Where were they asking you the
11:02:56 questions, in your car or --
11:02:58 **A.** Outside my car.
11:02:59 **Q.** I see, okay, and --
11:03:00 **A.** It was a friendly country encounter of the local
11:03:05 Oswego sheriffs. I knew eventually they would be
11:03:09 questioning me because I was the new kid on the block, it's
11:03:13 only natural that they would so --
11:03:15 **Q.** And what did they ask you when they pulled you over
11:03:18 on the roadside?
11:03:19 **A.** General questions. I -- more than likely -- well, I
11:03:32 don't know. Ask them.
11:03:34 **Q.** Do you have any recollection of what they asked you?
11:03:37 **A.** I'm sure they asked me where I was the night before
11:03:44 Heidi disappeared or whatever and where I was that morning.

11:03:48 **Q.** Where?

11:03:48 **A.** I'm sure, I mean that's why the reason why they, you know, wanted to check up on me because, you know, there's a girl missing. Of course you're going to ask the new stranger in the community.

11:04:07 **Q.** And when they asked you that question, what did you tell them? Where were you?

11:04:13 **A.** I don't think this is a fair line of questioning. I should be asked exactly the same question that they asked me.

11:04:26 THE COURT: It's not up to you to determine whether it's a fair line of questioning. Answer the question.

11:04:31 **A.** I don't remember exactly how the questions were so I really can't answer accurately how I responded.

11:04:39 **Q.** Well, let me ask you --

11:04:40 **A.** I can tell you in general.

11:04:42 **Q.** Okay, well, let me ask you this. Where were you the morning Heidi Allen was abducted in 1994?

11:04:48 **A.** At what time?

11:04:52 **Q.** Between seven in the morning and eight o'clock in the morning.

11:04:56 **A.** Passed out at Hermie Jordal's in little Texas.

11:05:00 **Q.** And did you tell that to the officers when they were asking you those questions that morning?

11:05:05 **A.** Sure.

11:05:06 **Q.** And who is Hermie Jordal?

11:05:09 **A.** He was a person that I befriended in the community.

11:05:17 **Q.** Is he still alive today?

11:05:19 **A.** No, he is not.

11:05:21 **Q.** Were you with anyone else at Hermie Jordal's house?

11:05:30 **A.** No because when we got to his house we were both
11:05:36 pretty drunk and he let me stay there instead of driving
11:05:43 back to Spinners so.

11:05:45 **Q.** Let me ask you this. What were you driving in 1994?

11:05:49 **A.** I believe it was a black eighty-seven GMC truck.

11:05:57 **Q.** So you were driving the black pickup truck in 1994?

11:06:03 **A.** I believe so.

11:06:03 **Q.** Now you had this conversation on the roadside. I'm
11:06:11 going back to when you were questioned two weeks --

11:06:13 **A.** Oh, wait, you jogged my memory. I think I had a
11:06:16 Ford seventy-two, wasn't a GTO, Ford. I don't know. I
11:06:32 can't remember.

11:06:32 **Q.** Okay, are you saying now you don't remember what you
11:06:34 were driving in 1994?

11:06:35 **A.** Oh, no, it was green, it was the Galaxy.

11:06:39 **Q.** Okay.

11:06:39 **A.** My God, I, you know, yeah, I had a Galaxy at that
11:06:43 time.

11:06:43 **Q.** Okay, so you weren't driving a black pickup truck in

11:06:47 1994, that's your testimony?

11:06:51 **A.** If I had mistakenly said I had the black truck, I apologize.

11:06:58 **Q.** Are you denying that you ever had a black truck?

11:07:00 **A.** No.

11:07:02 **Q.** When did you have a black truck?

11:07:05 **A.** After I had the green Galaxy.

11:07:06 **Q.** Did you tell Investigator Pietroski and Investigator Johnson that you were driving a black pickup truck in 1994?

11:07:15 **A.** I answered it this time as a black truck so more than likely I said a black truck, not remembering the Galaxy.

11:07:30 **Q.** Now --

11:07:31 **A.** You have to understand when they were questioning me, I had just -- they woke me up.

11:07:38 **Q.** You were sleeping while you were driving?

11:07:40 **A.** I had not -- hah?

11:07:41 **Q.** Wait. Where are you talking about, the questioning. Oh, Investigator Pietroski and Johnson?

11:07:47 **A.** Yeah, 2013.

11:07:49 **Q.** Where did -- you didn't meet them at your house though did you?

11:07:52 **A.** No. I met them at the Mapleview Diner.

11:08:00 **Q.** What time of day was that?

11:08:02 **A.** I believe it was morning, sometime late morning.

11:08:14 **Q.** How long did the interview last?

11:08:23 **A.** Including taking them to my place to get the box?

11:08:31 **Q.** Did they drive you in the car to take you to get the
11:08:34 box?

11:08:34 **A.** No, they followed me.

11:08:35 **Q.** Yeah. Including getting the box, how long was it do
11:08:39 you think?

11:08:39 **A.** I -- I guess at least an hour.

11:08:42 **Q.** Have you ever listened to the audio recording of the
11:08:46 interview between you and Investigator Pietroski and
11:08:49 Investigator Johnson?

11:08:50 **A.** No.

11:08:51 **Q.** All right. Now, let's get back to 1994. After
11:08:59 you're questioned on the roadside, were you ever questioned
11:09:03 again after that roadside conversation with Deputy Wheeler?

11:09:10 **A.** Yeah, I was -- I was questioned much later down the
11:09:24 road. I don't remember how long. More than a year. I'm
11:09:32 not sure.

11:09:32 **Q.** Now was that an interview with the Oswego County
11:09:35 Sheriff's Department?

11:09:38 **A.** Yeah. The only people I've ever spoke with.

11:09:42 **Q.** Didn't you speak with the FBI?

11:09:46 **A.** You know, you're -- you've got facts that coincide
11:09:55 with four or five different time frames and you're throwing
11:10:01 them all in and it's a one --

11:10:04 THE COURT: You don't understand the question,
11:10:05 ask her to rephrase the question. Don't make a
11:10:07 statement to Ms. Peebles.

11:10:08 THE WITNESS: Well, she's --

11:10:10 THE COURT: Ask -- if you don't understand the
11:10:11 question, simply ask her to rephrase the question.

11:10:14 **A.** Ask the previous questions that you just last asked.

11:10:17 **Q.** My question was after the roadside conversation with
11:10:20 Deputy Wheeler, were you interviewed again by the Oswego
11:10:24 County Sheriff's Department?

11:10:26 **A.** Yes.

11:10:28 **Q.** Okay, and do you know when that was?

11:10:32 **A.** When. It -- it's -- I'll have to say I don't know.

11:10:40 **Q.** You don't know?

11:10:41 **A.** No.

11:10:41 **Q.** Did you ever sign a sworn statement?

11:10:50 **A.** At an investigation, interrogation?

11:10:58 **Q.** Yes.

11:10:58 **A.** I don't believe so.

11:11:02 MS. PEEBLES: Judge, can I have a moment?

11:11:03 THE COURT: Sure.

(Whereupon, there was a pause in the
11:11:20 proceeding).

11:11:20 THE COURT: Do you need more time, Ms.
11:11:22 Peebles?

11:11:22 MS. PEEBLES: If I could just a minute, I'm
11:11:24 trying to locate a document, Judge, that I wasn't going
11:11:26 to use but I am now.

11:11:27 THE COURT: That's okay. Are you anticipating
11:11:37 five minutes, less than five minutes?

11:11:39 MS. PEEBLES: Can I have five minutes, Judge?
11:11:41 I may have to --

11:11:43 THE COURT: Let's recess for five minutes.
11:11:50 Sir, you can step down.

(Whereupon, there was a recess).

11:16:19 THE COURT: We're back on the record. Are you
11:16:20 ready, Ms. Peebles, Ms. Bianco?

11:16:22 MS. PEEBLES: I think the witness is speaking
11:16:24 with his attorney right now.

11:16:25 THE COURT: Okay. Would you mind seeing if
11:16:32 they're ready to come back in?

(Whereupon, there was a pause in the
11:16:37 proceeding).

11:18:22 THE COURT: We're back on the record. Ms.
11:18:25 Peebles.

11:18:25 MS. PEEBLES: Yes.

11:18:25 **Q.** Mr. Bohrer, I was asking you some questions about --

11:18:28 THE COURT: I don't mean to cut you off. Mr.
11:18:29 Bohrer, consider the fact that you're still under oath,
11:18:31 okay?

11:18:31 THE WITNESS: Yes.

11:18:32 THE COURT: Sorry about that. Go ahead.

11:18:35 **Q.** Mr. Bohrer, you indicated that you were interviewed
11:18:41 a couple times, but you don't remember the second time who
11:18:45 you were interviewed by. Is there a document that might
11:18:51 refresh your recollection as to who may have interviewed
11:18:54 you?

11:18:55 **A.** The second time I was interviewed?

11:18:58 **Q.** Yes.

11:19:00 **A.** I guess -- I think the only thing I remember is
11:19:19 being in the interview room and there were about ten
11:19:21 sheriffs standing, sitting in chairs and standing around,
11:19:24 pretty much just looking at me.

11:19:25 **Q.** Just looking at you? What do you mean by that?

11:19:30 **A.** I mean they were asking me questions, I don't
11:19:40 remember the questions, but it wasn't just one or two
11:19:51 sheriffs there.

11:19:53 **Q.** There were ten?

11:19:55 **A.** I don't know.

11:19:57 **Q.** Did you give a statement at that point?

11:20:02 **A.** I don't remember.

11:20:03 **Q.** Is there a document that might help refresh your
11:20:09 recollection as to whether or not you gave a statement?

11:20:13 **A.** Well, I'm sure it would help.

11:20:16 **Q.** Okay, I'm going to approach and hand you what's been

11:20:19 marked as Defendant's Exhibit 129 and ask you to look at
11:20:23 that document and read it to yourself and tell me if it
11:20:26 helps refresh your recollection.

11:20:30 (Whereupon, there was a pause in the
11:21:09 proceeding.)

11:21:09 **A.** This is from the FBI office?

11:21:12 **Q.** Does that refresh your recollection?

11:21:43 THE COURT: If the Court's correct, the
11:21:45 question is refreshing your recollection as to whether
11:21:47 or not a statement was given, correct?

11:21:50 MS. PEEBLES: Yes.

11:22:30 **A.** This is to the FBI?

11:22:33 **Q.** I'm asking you does that document refresh your
11:22:35 recollection about whether you gave a statement to an FBI
11:22:38 agent.

11:22:42 THE COURT: The question should actually be
11:22:43 did you give a statement. Now the question is does it
11:22:47 refresh your recollection as to whether you gave the
11:22:49 FBI agent. Is that now an amended question because the
11:22:52 first question was does it refresh your recollection as
11:22:54 to whether or not a statement was given. He then asked
11:22:59 you a question which was inappropriate but you then
11:23:02 changed the question.

11:23:03 MS. PEEBLES: Because of his question, Judge.

11:23:04 THE COURT: So that puts a new question. What

11:23:06 is your new question?

11:23:07 **Q.** My new question is --

11:23:07 THE COURT: Thank you.

11:23:07 **Q.** -- does that refresh your recollection with regard
11:23:10 to whether or not you gave a statement to the FBI back in
11:23:13 1995?

11:23:14 THE COURT: Thank you.

11:23:15 **A.** Is this --

11:23:43 THE COURT: Mr. Bohrer, you cannot ask a
11:23:45 question. Does that document that you have been handed
11:23:49 refresh your recollection as to whether or not you gave
11:23:52 a statement to the FBI in 1995? That's it. It's
11:23:58 either yes or no.

11:23:59 THE WITNESS: Yes.

11:24:00 **Q.** And having refreshed your recollection, do you
11:24:07 recall theorizing that it was a drug motive which resulted
11:24:14 in Heidi Allen being kidnapped?

11:24:17 MR. MOODY: Judge, I'm going to object. I
11:24:19 think that's a leading question. It's --

11:24:21 THE COURT: It's leading. I'll sustain as to
11:24:22 leading.

11:24:22 **Q.** Well, okay, what did you tell the FBI now that
11:24:25 you've read the report?

11:24:28 **A.** I don't know.

11:24:39 **Q.** You don't know or you don't remember?

11:24:48 **A.** You got me so I'm afraid if I make a mistake on what
11:24:52 little I read there, then my credibility will be stained or
11:25:01 something. I don't have photographic memory.

11:25:03 **Q.** I'm not suggesting you do. Do you know the general
11:25:07 substance of what you told the FBI after having read this
11:25:09 report? I'm not going to hold you word for word.

11:25:13 **A.** Well, not at this time.

11:25:23 **Q.** Not at this time?

11:25:26 **A.** I would have to read it more seriously.

11:25:31 **Q.** Well, if we took a break and allowed you to sit down
11:25:34 and read it at the lunch break perhaps and I'll go back to
11:25:37 a different line --

11:25:38 THE COURT: I think the appropriate line of
11:25:40 questioning would be if you review the document again,
11:25:41 would it refresh your recollection of what you said to
11:25:44 the FBI.

11:25:45 **Q.** If you reviewed this document a second time and you
11:25:47 had more time to read it, would that help assist you in
11:25:50 refreshing --

11:25:51 **A.** I'm sure it would.

11:25:56 THE COURT: Present it.

11:26:01 (Whereupon, there was a pause in the
11:26:03 proceeding).

11:26:24 MS. PEEBLES: Judge, in order to save a little
11:26:27 time, I'm suggesting perhaps I allow Mr. Bohrer at the

11:26:29 lunch break to take the document and review it a little
11:26:32 more thoroughly and I'll start a different line of
11:26:35 questioning.

11:26:36 THE COURT: Is that a refreshment of
11:26:39 recollection or is that a -- he completely forgot, now
11:26:41 he's learning it again? It's a difference.

11:26:45 MR. MOODY: I'm fine with that, Judge.

11:26:47 THE COURT: Okay, Mr. Bohrer, give the
11:26:48 document back to Ms. Peebles. With the consent of the
11:26:53 People, you can review it -- you want to photocopy it
11:26:56 for him to review on the lunch hour break?

11:26:58 MS. PEEBLES: We have an extra copy.

11:26:59 THE COURT: I would ask that you give him a
11:27:01 copy, not that one.

11:27:02 MS. PEEBLES: Yes.

11:27:02 THE COURT: Okay, and you can return to this
11:27:04 line of questioning after lunch?

11:27:06 MS. PEEBLES: Yes.

11:27:07 THE COURT: That's your consent, Mr. Moody?

11:27:09 MR. MOODY: Yeah, Judge.

11:27:10 **Q.** Okay, Mr. Bohrer, when Heidi Allen came up missing,
11:27:18 do you recall whether they set up a command center for --
11:27:22 for her, a search command center?

11:27:26 **A.** When I heard about her missing?

11:27:32 **Q.** No. Were you aware that they set up a command

11:27:34 center when Heidi Allen went missing?

11:27:38 **A.** No.

11:27:43 **Q.** Didn't you open a business right across from the Heidi Allen Center?

11:27:48 **A.** Yes, I did.

11:27:50 **Q.** Okay, so you are aware that there was a command center for Heidi Allen, right?

11:27:54 **A.** I thought you were talking about the day that she turned up missing that people went to a command center or something, but I am aware of that place across from the post office that they set up much later.

11:28:17 **Q.** And what was the -- what was the business that you opened up across from that command center?

11:28:22 **A.** Little Fix-it Shop.

11:28:24 **Q.** And what was that shop, what was the business?

11:28:28 **A.** Basically I specialized in fixing sentimental products, pieces, Christmas ornaments, ceramics. A lot of old people with sentimental items would -- that broke years ago and -- and wanted it fixed.

11:28:55 **Q.** Where exactly -- give the Court an idea as to where exactly this business was located.

11:28:59 **A.** Next to the post office in New Haven.

11:29:02 **Q.** All right, what street are we talking about?

11:29:04 **A.** 104 and six.

11:29:07 **Q.** And how long were you operating that business?

11:29:11 **A.** Less than a year, just for the summer.

11:29:14 **Q.** And did -- at any other time did you open up another business?

11:29:21 **A.** Yeah. Eventually I opened up another business, yes.

11:29:26 **Q.** And what was the name of that business?

11:29:28 **A.** Medspars.

11:29:30 **Q.** And what type of business was Medspars?

11:29:32 **A.** Electronic repair and computer service and repair.

11:29:38 **Q.** Do you recall what year you opened up that business?

11:29:40 **A.** It was fall of 1996.

11:29:45 **Q.** And can you tell the Court the location of that business?

11:29:50 **A.** It's on State Route 69 near the railroad tracks.

11:29:56 **Q.** And what -- what road runs perpendicular to Route 69?

11:30:04 **A.** Route 11.

11:30:05 **Q.** And what about on the other side? Well, strike that.

11:30:10 **A.** Actually that's State Route 11.

11:30:12 **Q.** State Route 11.

11:30:13 **A.** Right.

11:30:14 **Q.** Okay, and what -- what other road runs behind Medspars do you know?

11:30:21 **A.** Beley's Drive.

11:30:25 **Q.** Can you spell that?

11:30:28 **A.** Hum?

11:30:28 **Q.** Can you spell that?

11:30:28 **A.** Beley?

11:30:30 **Q.** Beley? For the court reporter?

11:30:31 **A.** B-E-L-E-Y.

11:30:33 **Q.** And how far was Medspars from Rice Road?

11:30:37 **A.** In the seventeen years I was there, I don't think I 11:30:43 was aware of Rice Road.

11:30:45 **Q.** Did you know Deb Vecchio?

11:30:47 **A.** Oh, yeah, but I didn't remember she was on Rice 11:30:51 Road.

11:30:51 **Q.** I didn't say she was on Rice Road.

11:30:54 **A.** Well --

11:30:57 **Q.** What does that mean? I just asked if you knew Deb 11:31:04 Vecchio.

11:31:04 **A.** Yeah, but I was -- I was -- the first question I 11:31:07 asked in reference to when I was at -- at Spinners, or not 11:31:13 Spinners, at Medspars.

11:31:19 **Q.** How -- how did you know Deb Vecchio?

11:31:24 **A.** I had met Debbie Vecchio I think through Tina I 11:31:35 think.

11:31:35 **Q.** Tina, your girlfriend?

11:31:37 **A.** Girlfriend. She worked at East Coast Resorts.

11:31:39 **Q.** Do you remember what year that was?

11:31:41 **A.** No.

11:31:42 **Q.** Do you remember what year you met Deb Vecchio?

11:31:45 **A.** No.

11:31:47 **Q.** But you know that Deb Vecchio lived on Rice Road?

11:31:53 **A.** I didn't remember that she lived on Rice Road.

11:31:55 **Q.** Had you ever been to her house?

11:31:58 **A.** Twice.

11:32:01 **Q.** Do you remember when you were -- what the time frame
11:32:06 of when you were at Deb Vecchio's house?

11:32:10 **A.** No, I don't.

11:32:11 **Q.** In the last ten years?

11:32:15 **A.** No. I think it was -- I don't remember.

11:32:22 **Q.** You don't have any recollection? Could it have been
11:32:25 twenty years ago?

11:32:26 **A.** It was a casual, you know, just a -- I don't even
11:32:36 remember why I -- I don't remember.

11:32:40 **Q.** Okay, you mentioned East Coast Travel. Did Deb
11:32:45 Vecchio work for East Coast Travel?

11:32:48 **A.** East Coast Resorts.

11:32:50 **Q.** Or East Coast Resorts, my apologies.

11:32:52 **A.** Yes.

11:32:53 **Q.** Did you hire her to work there?

11:32:57 **A.** No.

11:32:58 **Q.** Were you running --

11:32:59 **A.** I don't hire for East Coast Resorts.

11:33:01 **Q.** Well, were you contracting with them and hiring

11:33:04 employees?

11:33:06 **A.** I don't remember if I met her before or after, I
11:33:22 don't remember.

11:33:22 **Q.** Speaking of East Coast Travels, who -- who else
11:33:27 worked for East Coast Travel, do you recall?

11:33:29 THE COURT: It's East Coast Resorts.

11:33:31 **Q.** Or resorts, I'm sorry.

11:33:32 THE COURT: That's all right.

11:33:33 **A.** Repeat the question please.

11:33:35 **Q.** Why don't I withdraw the question and ask what is
11:33:38 East Coast Resorts?

11:33:39 **A.** East Coast Resorts is a timeshare campground
11:33:44 facility.

11:33:44 **Q.** Where is that located?

11:33:46 **A.** Parish, New York.

11:33:48 **Q.** Whereabouts in Parish?

11:33:50 **A.** One-oh -- whoops, State Route 69 and Crim Road.

11:33:56 **Q.** And what road?

11:33:58 **A.** Crim.

11:33:58 **Q.** Crim Road?

11:33:59 **A.** Yeah.

11:34:00 **Q.** Now was there some type of telemarketing that was
11:34:05 going on for East Coast Resorts?

11:34:07 **A.** Yes, there was.

11:34:07 **Q.** And where was that being operated out of?

11:34:10 MR. MOODY: Object. Can we have a time frame?

11:34:12 THE COURT: Yes, please, time frame.

11:34:14 **Q.** When did you start working with or for East Coast
11:34:18 Resorts?

11:34:18 **A.** Working for East Coast Resorts basically was
11:34:37 connected with my girlfriend Tina.

11:34:41 **Q.** Oh, how so?

11:34:43 **A.** She used to work for them, and she and I became a
11:34:49 couple, and she used to do the telemarketing for East Coast
11:34:57 Resorts, so I provided her with an opportunity to practice
11:35:06 her marketing to help Medspars' business, generate
11:35:13 business, and at the same time we could generate an income
11:35:18 providing services for East Coast Resorts, and I also
11:35:23 serviced their computers and developed software for them.

11:35:28 **Q.** Can you tell me what year it was that you and Tina
11:35:32 started working for -- with East Coast Resorts with
11:35:37 Medspar? What year was that when it began at its
11:35:41 inception?

11:35:41 **A.** I don't remember the year that I started.

11:35:43 **Q.** Was it in the late nineteen-nineties, was it in the
11:35:46 two-thousands?

11:35:47 **A.** It was before 2001.

11:35:52 **Q.** Now, this East Coast Resorts where you're talking
11:35:59 about the telemarketing aspect of it, you actually had to
11:36:02 hire people to do the telemarketing?

11:36:05 **A.** Yes. Well, Tina did.

11:36:08 **Q.** Tina hired the employees?

11:36:11 **A.** Most of the time, yeah.

11:36:12 **Q.** And do you recall a woman by the name of Danielle
11:36:19 Babcock?

11:36:19 **A.** Yes, I'm aware of Danielle.

11:36:22 **Q.** And how do you know Danielle?

11:36:23 **A.** Her and her sister came to the shop and applied for
11:36:31 a job because they -- kids spread the word that there's
11:36:37 work other than McDonald's.

11:36:39 **Q.** Who hired Danielle? Did you or Tina hire Danielle?

11:36:43 **A.** Well, I believe by that time Tina and I were broke
11:36:52 up, and I had to take over the telemarketing in her place.

11:37:02 **Q.** So what you're saying is you hired Danielle Babcock?

11:37:05 **A.** I -- I believe I did.

11:37:08 **Q.** Do you recall how old Danielle was when you hired
11:37:11 her to do the telemarketing for East Coast Resorts?

11:37:14 **A.** All the girls were sixteen.

11:37:17 **Q.** When you say all the girls, who else worked there?

11:37:21 **A.** They came and gone. There's a few that -- that
11:37:36 stuck out like Danielle and Tonya did. Amanda something or
11:37:42 other. Only because she had the most beautiful
11:37:50 handwriting. I -- I would recognize them maybe if I saw
11:37:54 them.

11:37:55 **Q.** When you're talking about the most beautiful

11:37:57 handwriting, were you referring to Danielle or the --
11:38:01 **A.** No, just one of the girls that I kind of remember.
11:38:07 **Q.** Okay.
11:38:07 **A.** And that's why, because I could read her writing.
11:38:10 **Q.** Okay, I see, I see.
11:38:11 **A.** These kids today can't read, write their names.
11:38:16 **Q.** Okay, so that's why you recall Danielle Babcock.
11:38:20 **A.** No, I recall Danielle Babcock because when they came
11:38:27 into the store with a friend that was -- I'm not sure.
11:38:39 **Q.** You're not sure why you remember her?
11:38:43 **A.** I'm not sure which friend they were with 'cause it's
11:38:50 kind of like they were referring them or something, or I
11:38:55 think there was a Tom Martin involved there. I'm going to
11:39:01 say I -- I don't remember enough to --
11:39:10 **Q.** How long was Danielle Babcock working for you?
11:39:13 **A.** I don't know. I don't remember how long.
11:39:21 **Q.** Did -- did you terminate her or did she quit?
11:39:26 **A.** I believe she quit.
11:39:30 **Q.** Did she tell you why she quit?
11:39:32 **A.** Or no, I think she was -- if I'm not mistaken, I
11:39:37 think she had a car accident and became paraplegic is what
11:39:45 I was told.
11:39:45 **Q.** Did she -- is it your testimony that she had a car
11:39:48 accident while she was working for you?
11:39:50 **A.** No, not -- I don't know. I don't -- I just -- no,

11:40:01 that's about the time I stopped seeing her.

11:40:02 **Q.** Well, I'm not trying to put words in your mouth, but
11:40:05 I'm trying to clear this up. Do you remember whether she
11:40:08 quit, was fired or became disabled?

11:40:12 **A.** I don't remember which one.

11:40:16 **Q.** She either quit or was disabled, is that your
11:40:21 testimony?

11:40:21 **A.** I don't remember the circumstances exactly why she
11:40:28 left.

11:40:30 **Q.** Did you ever have a -- well, strike that. Medspar
11:40:35 was also -- describe the interior of Medspar for me please.

11:40:40 **A.** There was an inner office area of two desks. Around
11:40:52 those two desks I had work bench area for servicing
11:40:58 computers. There was a room was divided by low office
11:41:09 walls, another computer repair table, and then there was
11:41:23 what I called the bullpen where there were a whole bunch of
11:41:29 tables where I had the telemarketers sit with -- doing
11:41:34 their smiling and dialing.

11:41:37 **Q.** Did you -- were your living quarters in that
11:41:39 building? Were you sleeping there?

11:41:42 **A.** Yeah, in the back section opposite side of the
11:41:48 building past the kitchen.

11:41:54 **Q.** Okay, so within Medspar, the building, the structure
11:41:58 itself.

11:41:58 **A.** It was -- it was -- I tried to maintain a separate

11:42:02 living spot.

11:42:03 **Q.** I see.

11:42:04 **A.** Yes.

11:42:04 **Q.** Okay, now when the girls were doing -- was it always girls, females that you hired to do the telemarketing?

11:42:11 **A.** Um hum.

11:42:11 **Q.** Now when they were doing this telemarketing for East Coast Resorts, did you ever have any interaction with them when they were sitting there on the phones?

11:42:22 **A.** I usually had a -- another woman managing and dealing with the girls.

11:42:37 **Q.** Who was the woman?

11:42:39 **A.** There was a Lydia Ford.

11:42:43 **Q.** Is she still alive?

11:42:46 **A.** I -- I believe so. She went on to college and I haven't heard back from her.

11:42:55 **Q.** So did you -- did you interact with the girls at the desk when you were there, when they were there doing the telemarketing, they were working for you.

11:43:04 **A.** Well, of course I interacted with them. I wrote the scripts and I would have to collect the tallies for the calls that they made and how many reservations they made. That's how they got paid.

11:43:31 **Q.** Now --

11:43:33 **A.** They would break for -- go on their breaks and they

11:43:41 had all the Schwan Food that they wanted. I took care of
11:43:46 them well.

11:43:46 **Q.** When is the last time you had any contact with
11:43:50 Danielle Babcock?

11:43:52 **A.** Before her accident.

11:43:54 **Q.** It was before her accident? You haven't had any
11:43:57 contact with her or conversation since?

11:43:59 **A.** No.

11:44:01 **Q.** Did you -- while she was telemarketing for you, did
11:44:06 you ever have any type of confrontation with Danielle
11:44:09 Babcock?

11:44:10 **A.** Say this again?

11:44:13 **Q.** Did you ever have a confrontation with Danielle
11:44:16 Babcock when she was working for you doing the
11:44:19 telemarketing?

11:44:19 **A.** No. She was always the quiet one of the -- of her
11:44:22 and her sister and far back table. I don't -- I don't -- I
11:44:28 had more problems with Tanya, her sister, than I did
11:44:33 Danielle. Danielle was --

11:44:38 **Q.** Let's --

11:44:38 **A.** I don't remember having a problem with Danielle.

11:44:41 **Q.** Let's talk about Tanya. Tanya Babcock is Danielle
11:44:47 Babcock's sister?

11:44:48 **A.** Twin sisters, yes.

11:44:49 **Q.** And she also worked at East Coast Travel.

11:44:54 **A.** These people did not -- these girls did not work for East Coast Resort.

11:44:59 **Q.** They worked for you, right, they worked for you.

11:45:01 **A.** Okay. I had the contract to provide a service for East Coast Resorts. I hired the girls. I paid the girls.

11:45:09 **Q.** I see, okay. Now did Tonya Priest ever work for East Coast Resorts?

11:45:15 **A.** I heard through the grapevine she eventually went to work for them after working for me.

11:45:22 **Q.** What do you mean through the grapevine?

11:45:28 MR. MOODY: Object. Are we talking about Tonya Priest or Tanya Babcock?

11:45:33 MS. PEEBLES: I asked him if he knew Tonya Priest.

11:45:35 THE COURT: They're not the same person.

11:45:37 MS. PEEBLES: No, they're not the same.

11:45:37 MR. MOODY: I just wasn't sure if it was --

11:45:39 MS. PEEBLES: It's not the same.

11:45:40 **A.** When did you start saying Tonya Priest?

11:45:42 **Q.** I just asked you and you said she did.

11:45:50 **A.** No, Tonya Shaw.

11:45:53 **Q.** Okay.

11:45:55 **A.** Well --

11:45:56 **Q.** Tonya. I apologize.

11:45:57 **A.** Makes a big difference.

11:45:58 **Q.** I understand what you're saying. Okay, Tonya Shaw. Do you now know her by another name?

11:46:04 **A.** Know her by three names.

11:46:06 **Q.** Right. Well, what are they?

11:46:07 **A.** Tonya Wheeler, Tonya Shaw, and I didn't know about Tonya Priest until all this came out in the papers.

11:46:18 **Q.** Okay, but we're talking about the same person though just so we know.

11:46:21 **A.** Yes.

11:46:21 **Q.** And she was working at East Coast Resorts at some point. Do you recall when that was?

11:46:27 **A.** At East Coast Resorts. I have no knowledge of her actually working for East Coast Resorts.

11:46:36 **Q.** Well, where did she work in conjunction with you?

11:46:40 **A.** I'm going to have to say I don't remember.

11:46:47 **Q.** Well, you mentioned Tonya Shaw. Did you know Sid Shaw, her husband?

11:46:52 **A.** Unfortunately.

11:46:54 **Q.** And why do you say unfortunately?

11:46:56 **A.** I don't know. I have nothing good to say about him.

11:47:04 **Q.** Why is that?

11:47:05 **A.** He's a mean, ornery -- he's just -- don't like him.

11:47:11 **Q.** When did you first meet Sid Shaw?

11:47:14 **A.** Back when he was a teenager.

11:47:17 **Q.** Okay, do you recall what year that was?

11:47:18 A. I believe it was before Heidi disappeared.

11:47:30 Q. It was before Heidi disappeared?

11:47:32 A. I believe so.

11:47:33 Q. What was the nature of your relationship with Sid
11:47:35 Shaw?

11:47:37 A. None.

11:47:38 Q. You had no contact with him?

11:47:40 A. (Shakes head.) Enough to --

11:47:44 Q. How did you --

11:47:45 A. -- say hi, that's about it.

11:47:47 Q. Okay, so why didn't you like him if you didn't have
11:47:50 any real relationship with him?

11:47:54 A. I mean you're talking about a time when he was a
11:48:00 teenager versus when he was married as an adult.

11:48:04 Q. No, I'm really not. I'm asking you what was the
11:48:07 nature of your relationship with Sid Shaw?

11:48:11 MR. MOODY: I'm going to object. Can we have
11:48:13 a time frame because apparently the witness thinks
11:48:15 there is a time frame difference.

11:48:16 THE COURT: Yeah, I guess to assist the
11:48:18 witness it might be better if you clarified did he
11:48:21 dislike him as teenager or as an adult because there
11:48:25 seems to be a confusion.

11:48:27 Q. When did you first meet Sid Shaw?

11:48:30 A. When he was a teenager.

11:48:34 **Q.** Do you remember what year that was?
11:48:35 **A.** And -- no, other than it was before Heidi
11:48:46 disappeared because I knew Hermie.
11:48:49 **Q.** Okay, so it had to be before.
11:48:50 **A.** Which was his uncle.
11:48:52 **Q.** Okay, so it had to be --
11:48:53 **A.** He was one of the many kids in the background at
11:48:56 family gatherings and stuff and I was out usually invited
11:49:00 and welcomed at the family gatherings and Rubin or Sid
11:49:08 was -- well, Tonya Wheeler was usually hanging around him
11:49:14 and his brother and a few other kids there in the
11:49:20 background.
11:49:21 **Q.** And that was before Heidi Allen went -- came up
11:49:24 missing.
11:49:27 **A.** Yeah.
11:49:28 **Q.** So Tonya Wheeler, so the Court is clear, is
11:49:33 actually -- is also now known as Tonya Priest?
11:49:37 **A.** Yes.
11:49:37 **Q.** And do you know when Tonya Priest married Sid Shaw?
11:49:43 **A.** No. It was after Heidi disappeared, quite sometime
11:49:54 later, and it's not like I kept track of these kids.
11:50:02 Eventually I learned that she was married to Sid and I
11:50:08 believe my response was oh, my God.
11:50:12 **Q.** All right, could you just describe to me how your
11:50:17 relationship evolved over the years from when Sid Shaw was

11:50:21 a teenager up to and including the present time?

11:50:25 MR. MOODY: I'm going to object. Is this a
11:50:26 relationship with Sid or the relationship with Tonya?

11:50:29 MS. PEEBLES: Sid.

11:50:29 THE COURT: She said Sid. Limit it to Sid.

11:50:33 **A.** I -- I had no relationship with -- with Sid or Tonya
11:50:39 really. They -- they were just around because I was
11:50:44 hanging out with Hermie.

11:50:46 **Q.** When you say they were around, how often did you see
11:50:50 them?

11:50:50 **A.** Not -- not frequently.

11:50:54 **Q.** Well, a couple times a week, a couple times a month,
11:50:58 twice a year?

11:50:59 **A.** No set standard time frame, just whenever they
11:51:04 happened to have been at their uncle's and I was there too.

11:51:07 **Q.** Okay, so essentially you would see him at various
11:51:10 family functions and gatherings because you were friends
11:51:13 with uncle Hermie Jordal?

11:51:15 **A.** I hung out with him more than that. We cut firewood
11:51:25 and that's about it.

11:51:26 THE COURT: For my clarification, are you
11:51:28 talking about Hermie or Sid?

11:51:29 THE WITNESS: Hermie. The uncle. I didn't
11:51:35 have a relationship with the kids.

11:51:36 **Q.** So the only time you really saw Sid Shaw and Tonya

11:51:39 Priest was when you were with Hermie or doing something in
11:51:42 conjunction with Hermie Jordal. I'm just trying to get
11:51:45 this straight.

11:51:45 **A.** Correct.

11:51:46 **Q.** And you have no recollection of Tonya Priest or
11:51:48 Wheeler working at East Coast Travel?

11:51:52 **A.** No.

11:51:53 MR. MOODY: I object. I thought it was East
11:51:57 Coast Resorts.

11:51:57 MS. PEEBLES: Resorts. I keep saying travel.
11:51:59 I think I want to travel actually.

11:52:01 THE COURT: Do you want to try East Coast
11:52:04 Resorts? Maybe it will help you.

11:52:17 **Q.** I want to talk to you about an individual named
11:52:22 Roger Breckenridge. Do you know Roger Breckenridge?

11:52:25 THE COURT: This might be a good time to break
11:52:28 about five minutes. I assume this is going to be more
11:52:29 than five minutes line of questioning.

11:52:31 MS. PEEBLES: Yes.

11:52:32 THE COURT: Why don't we break now till one
11:52:34 o'clock. Court's in recess.

11:52:43 (Whereupon, there was a recess.)

12:50:34 THE COURT: Mr. Bohrer. Would you swear him
12:59:33 in again please just so there's no question? Mr.
12:59:36 Bohrer, you're going to be sworn in again, okay?

12:59:40 THE CLERK: Raise your right hand, left on the
12:59:44 Bible.

MICHAEL BOHRER, Called as a witness, having
12:59:48 been duly sworn, was examined and testified as follows:

12:59:48 THE CLERK: Please state your name for the
12:59:55 record.

12:59:55 THE WITNESS: Michael Bohrer.

12:59:57 THE CLERK: Have a seat please.

01:00:01 THE COURT: Mr. Bohrer, I'm going to again ask
01:00:04 do you consent to having your testimony video and audio
01:00:07 taped?

01:00:07 THE WITNESS: No.

01:00:07 THE COURT: Okay. Ms. Peebles, are we going
01:00:13 back to the statement or are we going down the lines of
01:00:15 where we left off?

01:00:16 MS. PEEBLES: I was -- I'll come back to the
01:00:18 statement. At this point, Judge, I started asking him
01:00:19 a question about --

01:00:20 THE COURT: Breckenridge.

01:00:21 MS. PEEBLES: Yeah.

01:00:22 THE COURT: Don't go. I need a pad of paper,
01:00:27 I apologize.

01:01:39 (Whereupon, there was a pause in the
01:01:40 proceeding.)

01:01:40 THE COURT: Sorry about that.

01:01:42 BY MS. PEEBLES:

01:01:43 **Q.** Mr. Bohrer, I want to ask you some questions about an individual named Roger Breckenridge. Do you know who Roger Breckenridge is?

01:01:53 **A.** I do now, yes.

01:01:56 **Q.** When is the first time you met Roger Breckenridge?

01:02:01 **A.** Somebody brought an incident to my attention after this story came out in the papers. It was at Tom Martin's residence where his -- well, actually Tom Martin's mother's residence, a Pat Hollenbeck (ph) reminded me that that's when Tom Martin, or that's when Tom Martin introduced Breckenridge to me, and at that time I acknowledged oh, that's Breckenridge? I didn't remember until I was reminded.

01:03:02 **Q.** What year was that?

01:03:03 **A.** I don't know.

01:03:07 **Q.** Okay, was it before 1994?

01:03:11 **A.** No.

01:03:16 **Q.** When -- when was it?

01:03:20 **A.** I don't remember.

01:03:33 **Q.** Did you recall being interviewed on March twenty-first of 2013 with Investigator Pietroski and Investigator Johnson?

01:03:45 **A.** Yes.

01:03:46 **Q.** And do you recall telling the investigators that

01:03:51 Roger Breckenridge had the eyes of a killer?

01:03:55 MR. MOODY: Objection, Judge. What's the 01:03:57 relevance of what his eyes look like?

01:04:00 THE COURT: I'll allow it.

01:04:03 **A.** Yeah, he's got scary eyes.

01:04:10 **Q.** I'm going to ask you some questions about Rich 01:04:15 Murtaugh's junkyard.

01:04:17 **A.** Okay.

01:04:18 **Q.** You're familiar with Rich Murtaugh's junkyard?

01:04:22 **A.** Yes, I am.

01:04:23 **Q.** And you scrapped vehicles at Rich Murtaugh's 01:04:27 junkyard?

01:04:28 **A.** Yes, I did.

01:04:29 **Q.** And you were scrapping vehicles during the time 01:04:31 period when Heidi Allen went missing, is that correct?

01:04:34 **A.** Yeah, I believe I -- I started scrapping before 01:04:41 she --

01:04:51 **Q.** And --

01:04:52 **A.** Yeah, I was, I had just started scrapping, yes.

01:04:56 **Q.** And you were scrapping at Rich Murtaugh's junkyard?

01:04:59 **A.** Primarily, yes.

01:05:01 **Q.** Now I'm going to ask you some questions about James 01:05:04 Steen. Do you know James Steen?

01:05:05 **A.** No, I didn't, and he doesn't -- I -- I -- I don't 01:05:12 know him.

01:05:13 **Q.** When you were asked by Investigator Pietroski and Investigator Johnson back in 2013 --

01:05:20 **A.** Um hum.

01:05:21 **Q.** -- did you tell him that his name rang a bell?

01:05:24 **A.** Yes, I did.

01:05:25 **Q.** Okay, and why did that ring a bell? Why did his name ring a bell?

01:05:29 **A.** Because the name Thumper. I've heard the name Thumper. That's --

01:05:40 **Q.** You know that's his nickname.

01:05:43 **A.** I do now.

01:05:44 **Q.** Well, when's the first time you heard the name Thumper?

01:05:48 **A.** From Tom Martin talking about Breckenridge and -- and Thumper. He -- he tells stories about people and these names would typically pop up out of his mouth.

01:06:08 **Q.** What do you mean he tells stories about people?

01:06:12 **A.** He's a pathological liar. He believe -- you can only believe about ten percent of what he says.

01:06:18 **Q.** Okay, and what makes you say that?

01:06:21 **A.** Um --

01:06:26 MR. MOODY: Judge, I'm going to object. Are we asking one witness to testify about the credibility of another witness?

01:06:31 THE COURT: I think if he has some knowledge

01:06:33 of why he -- what's the basis of his disbelief, Mr.
01:06:36 Martin's, it's relevant to a limited amount. Go ahead,
01:06:40 Mr. --

01:06:40 **A.** Tom Martin I befriended --

01:06:47 MR. MOODY: Judge, can we have some
01:06:49 clarification? Maybe I'm confused. I thought he was
01:06:52 talking about Steen. Is he talking about Martin
01:06:53 talking about Steen?

01:06:54 THE COURT: He's talking about credibility
01:06:55 of --

01:06:56 MS. PEEBLES: Steen.

01:06:57 THE COURT: No, oh, no, I think he's talking
01:06:59 about Mr. Martin.

01:07:00 MS. PEEBLES: Oh, okay.

01:07:01 MR. MOODY: That's where I was confused.

01:07:02 **Q.** Clear that up for me please, Mr. Bohrer.

01:07:04 **A.** For years, you know, Martin goes rambling on about
01:07:10 this person, that person, blah, blah, blah, blah, blah,
01:07:12 blah, and I don't have any visual of the person because
01:07:19 most of these people I have no clue who they are, but
01:07:25 through the years it becomes repetitious names.

01:07:30 **Q.** Okay, I just need to clear this up in my own head.
01:07:34 Whose credibility were you questioning when I asked you the
01:07:37 question before?

01:07:42 THE COURT: Let's be more specific. Who do

01:07:44 you only believe ten percent of the time?

01:07:46 THE WITNESS: Tom Martin.

01:07:47 **Q.** Okay, now, I was asking you about Steen. Thumper.

01:07:55 **A.** Yeah, I didn't know Thumper.

01:07:57 **Q.** So what stories was Tom Martin telling you about
01:08:01 Steen?

01:08:03 MR. MOODY: I'm going to object, Judge. We're
01:08:06 really getting into hearsay now.

01:08:07 THE COURT: Sustained.

01:08:10 **A.** Ask the question again?

01:08:11 THE COURT: No, you don't have to answer.

01:08:13 **Q.** I guess I need some clarification from you, Mr.
01:08:17 Bohrer, with respect to your knowledge about James Steen,
01:08:22 James Thumper Steen. Can you please tell me what contact
01:08:28 you've had with James Steen through the years that you've
01:08:31 lived in Oswego County?

01:08:33 **A.** Very few, and the few times I -- I may have, he was
01:08:46 probably hanging out with Tom Martin.

01:08:50 **Q.** So when you're hanging out with Tom Martin, that's
01:08:54 when you would see James Steen, is that a fair statement?

01:08:57 **A.** And Breckenridge, yes.

01:08:59 **Q.** Okay, so Breckenridge and Steen were together with
01:09:02 Tom Martin?

01:09:04 **A.** I don't think that ever occurred.

01:09:07 **Q.** Okay, tell me what occurred.

01:09:10 MR. MOODY: Can we have a time frame here?

01:09:12 THE COURT: Do you have some type of idea
01:09:13 when?

01:09:14 **Q.** Can you tell us when this would have been?

01:09:18 **A.** I met Tom Martin through Hermie Jordal the year
01:09:28 of -- it was wintertime. I don't recall the exact year.

01:09:46 **Q.** Could you give me an approximation? Was it when --

01:09:57 **A.** After -- after ninety-four.

01:10:01 **Q.** You're certain it was after ninety-four?

01:10:08 **A.** Yeah, but it was just a brief encounter, and then I
01:10:14 didn't meet him again for -- until probably the following
01:10:20 spring.

01:10:21 **Q.** Okay.

01:10:22 **A.** Because I had to go pick up a trailer for Hermie
01:10:28 Jordal, and the trailer was located at Tom Martin, and that
01:10:33 would have been the second time I met Tom Martin or, oh, it
01:10:39 was before ninety -- it was in ninety-four I met him.

01:10:43 **Q.** You met Roger Breckenridge in ninety-four or Steen,
01:10:47 I'm sorry, I'm trying to --

01:10:48 **A.** It had to have been in ninety -- the winter of
01:10:52 ninety-four.

01:10:54 MR. MOODY: Judge, I'm going to object. Who
01:10:55 are we talking about? We have three or four different
01:10:58 names we're trying to talk about.

01:10:59 THE COURT: Who did you meet in the winter of

01:11:01 1994, sir?

01:11:02 THE WITNESS: I -- I met Tom Martin.

01:11:09 **Q.** Okay, I'm not talking about Tom Martin. When did 01:11:12 you meet Roger Breckenridge? That's my question.

01:11:16 **A.** It was before the trailer, so it was sometime I 01:11:27 guess in ninety-four.

01:11:30 **Q.** And how about Mr. Steen?

01:11:33 **A.** Never, never did. If I did it was a very uneventful 01:11:42 time. I didn't care for most of Tom Martin's friends. 01:11:54 I -- like I said, I only interacted with Tom Martin on a 01:12:02 few occasions because he would show up at Hermie's.

01:12:08 **Q.** Okay, you keep wanting to bring up Tom Martin so why 01:12:11 don't we talk about Mr. Martin. When did you first meet 01:12:14 Mr. Martin?

01:12:15 MR. MOODY: Judge, I'm going to object. Why 01:12:17 are we now talking about Mr. Martin? How does this 01:12:19 relate to anything with this motion?

01:12:20 THE COURT: What's the relevance?

01:12:22 MS. PEEBLES: Every time I talk about Mr. 01:12:24 Breckenridge and try to ask a question, or Mr. Steen, 01:12:26 Tom Martin comes up, so I need to clear up why that is.

01:12:29 THE COURT: Earlier that's what --

01:12:32 **A.** I befriended Tom Martin for seventeen years.

01:12:35 THE COURT: Mr. Bohrer, be quiet. He answered 01:12:38 earlier that's where he would see Steen and

01:12:40 Breckenridge, at Tom Martin's. He already answered
01:12:42 that.

01:12:42 **Q.** Do you still see Tom Martin today?

01:12:45 **A.** Heck, no.

01:12:46 **Q.** Why not?

01:12:47 MR. MOODY: Judge, I object. Where is the
01:12:49 relevance of why he does or doesn't meet Tom Martin?

01:12:52 THE COURT: Sustained.

01:12:53 MS. PEEBLES: Well, Your Honor, I disagree.
01:12:54 He basically said that he didn't like any of the people
01:12:57 Tom Martin hung around with and I'd like to know who
01:12:59 those individuals are.

01:12:59 THE COURT: Why's it relevant if he still sees
01:13:01 Tom Martin?

01:13:02 MS. PEEBLES: Because that's when he sees
01:13:04 Roger Breckenridge and James Steen.

01:13:06 THE COURT: He already testified he hung out
01:13:07 with Mr. Martin a couple of times so I'm going to
01:13:10 sustain.

01:13:10 MS. PEEBLES: Well, a couple of times? Well,
01:13:12 I don't think that that's fair characterization of the
01:13:14 testimony and I want clarification on that.

01:13:16 THE COURT: Ask him how many times he's seen
01:13:18 Tom Martin.

01:13:18 **Q.** How many times have you seen Tom Martin?

01:13:20 **A.** Between what time and what time?

01:13:22 **Q.** Between the first time you met him until the present
01:13:25 day.

01:13:25 **A.** I met him once before in the wintertime. The spring
01:13:34 I met him at his house or mother's house to pick up the
01:13:40 trailer. I delivered the trailer, set it up with Hermie,
01:13:51 and the next time I seen Martin, okay, probably -- I
01:14:32 don't -- I don't remember. It was after -- it was after
01:14:41 ninety-four.

01:14:44 **Q.** So the last time you spoke with Tom Martin was after
01:14:47 ninety-four.

01:14:47 **A.** You got the winter of -- of ninety-three, I'm sorry,
01:14:52 and then the spring of ninety-four. It's fuzzy. It's so
01:15:05 long ago.

01:15:06 **Q.** So you haven't had any recent contact with Tom
01:15:09 Martin, is that what you're saying?

01:15:12 **A.** Recent? No.

01:15:15 **Q.** Now, I asked you some questions about Murtaugh's
01:15:21 junkyard, and you're familiar with Murtaugh's junkyard?

01:15:25 **A.** Um hum.

01:15:25 **Q.** Do you know Rich Murtaugh?

01:15:27 **A.** Yes.

01:15:27 **Q.** How do you know Rich Murtaugh?

01:15:29 **A.** Because he is the son of the owner of the Crosby
01:15:41 Hills Junkyard.

01:15:42 **Q.** Where is Crosby Hill Junkyard located?
01:15:46 **A.** Close to Fulton. I'm not sure if it's North Volney
01:15:52 or if there's a town in between there. I think it's North
01:15:58 Volney.
01:15:58 **Q.** Now, when you were -- well, when were you first
01:16:02 introduced to Rich Murtaugh, the son of Crosby Hill, the
01:16:06 owner of Crosby Hill?
01:16:07 **A.** Introduced to him. I don't -- he was just the son
01:16:30 of the guy that owns the junkyard. I mean --
01:16:33 **Q.** Did you ever hang out with him?
01:16:35 **A.** No.
01:16:37 **Q.** Ever talk to him?
01:16:38 **A.** Eventually --
01:16:41 **Q.** Okay.
01:16:41 **A.** -- we talked.
01:16:42 **Q.** When -- do you remember or do you have a time frame
01:16:45 of when the first time you spoke with Rich Murtaugh would
01:16:49 be?
01:16:49 **A.** There's a reason why I took interest in Richard
01:17:12 Murtaugh.
01:17:12 **Q.** Okay, why was that?
01:17:14 **A.** Because I was looking for Heidi Allen.
01:17:18 **Q.** Were you looking for Heidi Allen when? Well, let me
01:17:23 ask you this. I asked when the first time you had a
01:17:25 conversation with Rich Murtaugh was. Can you tell me when,

01:17:28 what date that was? Was that before or after Heidi Allen
01:17:31 went missing?

01:17:34 **A.** Before.

01:17:35 **Q.** Okay, so you had a conversation with Rich Murtaugh
01:17:39 before Heidi Allen was abducted, is that a fair statement?

01:17:44 **A.** Well, when?

01:17:44 **Q.** Well, I don't know, whatever, the first time you
01:17:46 talked to him.

01:17:46 **A.** I was junking. I established I was junking cars
01:17:51 before Heidi Allen disappeared.

01:17:53 **Q.** Right.

01:17:54 **A.** So I may have had, you know, dialogue with him
01:18:03 pertaining to junk cars.

01:18:11 **Q.** Before Heidi Allen went missing.

01:18:14 **A.** Yeah, but I just don't understand. I guess I'm --
01:18:31 he was just a guy that worked at the junkyard. I mean --

01:18:35 **Q.** Did you have any other type of relationship with
01:18:37 Rich Murtaugh other than talking to him when you would go
01:18:40 to scrap cars?

01:18:42 **A.** In ninety-four? No.

01:18:44 MR. MOODY: Judge, can I -- can we approach
01:18:47 for just a second? It's not on anything legal. I just
01:18:51 have a question.

01:18:51 THE COURT: Sure.

01:18:54 (Whereupon, there was an off the record

01:19:37 discussion at the bench.)

01:19:37 MS. PEEBLES: Can I just ask a question?

01:19:41 THE COURT: Sure. I think it was left with
01:19:44 Mr. Bohrer saying he was just a guy who worked at the
01:19:48 junkyard.

01:19:49 **A.** We had no relationship.

01:19:51 **Q.** Okay, and you never had any relationship with Rich
01:19:53 Murtaugh?

01:19:57 **A.** I -- the question confused me because I just
01:20:03 answered that --

01:20:03 **Q.** All right, I apologize, let me --

01:20:04 **A.** -- question. At the time that frame that we're
01:20:06 talking about, I didn't at first until somewhere along the
01:20:17 line I wanted to know if he had junked a blue van.

01:20:23 **Q.** Why -- why did you want to know if he junked a blue
01:20:26 van?

01:20:28 **A.** Because three days after Heidi turned up missing, I
01:20:37 knew somebody with a blue van that was no longer parked
01:20:43 where it was parked.

01:20:44 **Q.** Okay, who was that somebody?

01:20:46 **A.** It was at the -- Matt Duell's Sawmill.

01:20:51 **Q.** Okay, you didn't know who owned that van?

01:20:58 **A.** Yes. The girl at the video store informed me that
01:21:01 that was Matt Duell's van.

01:21:05 **Q.** Okay, and you -- had you approached Rich Murtaugh

01:21:11 about that van?

01:21:12 **A.** Rich Murtaugh, yeah, I -- I got bodacious and says
01:21:22 hey, did you junk Matt Duell's van, and he looked at me and
01:21:28 smiled, says yes, I did.

01:21:33 **Q.** Okay.

01:21:33 **A.** And then he volunteered a statement that really
01:21:39 surprised me, and he says no, Heidi Allen was not in the
01:21:44 van, and I said -- I forget what I said, or maybe I just
01:21:57 responded, and he responded with something pertaining to if
01:22:11 she was in the van, it would be impossible to hide because
01:22:19 it would be constantly dripping blood, and I said really.
01:22:26 He says, oh, yeah, he says whenever it rains or whatever,
01:22:33 so I kind of like wondered how he knew that, but I accepted
01:22:41 his expertise being a junker, you know. I don't know what
01:22:47 his experiences are, but I got the information I was
01:22:50 looking for as a validation of where the van went.

01:22:55 **Q.** Where -- where did the van go?

01:22:57 **A.** And I was specifically looking for blue van because
01:23:00 of the statement by the eyewitness, I believe the first two
01:23:09 statements that he wrote, he was indicating a blue van.

01:23:12 **Q.** Okay, I'm going to ask you a little bit about that.
01:23:16 Now in the box of information that you had that you turned
01:23:21 over to Investigator Pietroski and Johnson.

01:23:24 **A.** Um hum.

01:23:24 **Q.** You had Christopher Bivens' statements in there?

01:23:28 **A.** Yes.

01:23:29 **Q.** Do you remember that? In fact, you talked to
01:23:39 Investigator Pietroski and Johnson about having those
01:23:43 statements, do you remember that?

01:23:44 **A.** Yes.

01:23:45 **Q.** And he was for all intents and purposes the only
01:23:54 eyewitness that had come forward. Is that --

01:23:58 MR. MOODY: I'm going to object about how this
01:23:59 witness would know that.

01:24:00 THE COURT: I'm confused about who we're
01:24:02 talking about at this point.

01:24:04 MS. PEEBLES: Christopher Bivens.

01:24:05 THE COURT: Lay some foundation as to whether
01:24:07 or not he has any knowledge that he's the only one that
01:24:10 came forward.

01:24:10 **Q.** Well, let me hand you --

01:24:11 MS. PEEBLES: If I may approach, Your Honor.

01:24:13 **Q.** I'm going to hand you Defendant's Exhibit 52 and ask
01:24:17 if you can take a look at that document and if you
01:24:20 recognize that document as being in the box that they --
01:24:24 that you turned over.

01:24:29 THE COURT: Fifty-two, Ms. Peebles?

01:24:32 MS. PEEBLES: Yes, fifty-two.

01:24:36 **A.** Did you have all seven statements in the box still?

01:24:41 **Q.** Well, I can hand you what's also been marked as

01:24:44 Defendant's Exhibit 52A.

01:24:46 **A.** I made a comment to the investigator that --

01:24:49 THE COURT: No, no, that's not the question before you. The question is do you recognize what's been handed to you.

01:24:55 THE WITNESS: Yes.

01:24:57 **Q.** And was that the document that was in your box that you turned over to Investigator Pietroski?

01:25:04 **A.** Yeah. I had just about all of them.

01:25:06 **Q.** Okay, I'll get to that. I want to -- you to --

01:25:10 MS. PEEBLES: At this time I'd like to offer Exhibit 52, Your Honor, into evidence. It's not offered for the truth of the matter.

01:25:16 THE COURT: Well, I'm confused. Is fifty-two -- the witness spoke of seven pages and I'm seeing two pages.

01:25:23 MS. PEEBLES: 52A is the other statement that he was referring to.

01:25:26 THE COURT: Not this alleged statement from Mr. Bivens.

01:25:28 MS. PEEBLES: Right. Mr. Bivens gave multiple statements and he's referring to Exhibit 52.

01:25:32 THE COURT: So why do you want to offer fifty-two?

01:25:36 MS. PEEBLES: I want to offer fifty-two in

01:25:38 because I want to ask him some questions about having
01:25:40 it in his box and he just suggested --

01:25:42 THE WITNESS: I need to know which version of
01:25:43 his statement this is.

01:25:44 THE COURT: Hold on, hold on.

01:25:46 MR. MOODY: I just didn't want him speaking
01:25:49 while a legal discussion was going on, that's all.

01:25:51 THE COURT: It's hearsay.

01:25:53 MS. PEEBLES: I'm not offering it for the
01:25:54 truth of the matter.

01:25:54 THE COURT: He can't testify to what Bivens
01:25:56 said.

01:25:57 MS. PEEBLES: I'm not going to ask him that.

01:25:59 MR. MOODY: Maybe I'm lost then. If she wants
01:26:00 to know why it was in the box, she can ask him why it
01:26:03 was in the box.

01:26:04 MS. PEEBLES: I have more questions. I'm not
01:26:06 asking him about the contents.

01:26:08 THE COURT: As long as she doesn't go along
01:26:09 the line of what did Mr. Bivens say --

MS. PEEBLES: Absolutely not.

01:26:11 THE COURT: -- it doesn't broach the issue of
01:26:13 hearsay. I'm not sure what it's worth, but I'll let it
01:26:17 in. Take it away from him.

(Defendant's Exhibit No. 52 was received in

01:26:18 evidence).

01:26:18 **Q.** Was that in your box?

01:26:20 **A.** Yes.

01:26:23 **Q.** Take that. And --

01:26:25 THE COURT: So you're offering it for the fact
01:26:27 that it was in his box?

01:26:28 MS. PEEBLES: Right.

01:26:29 THE COURT: And that's it.

01:26:29 **Q.** And also can you take a look at that document
01:26:32 please? Is there a fax number at the top of that document?

01:26:38 MR. MOODY: Judge, I'm going to object. I
01:26:41 don't understand what -- if she wants to talk about
01:26:42 what's in the box, we have the box here, I don't -- I
01:26:44 haven't seen the document that she's got. What does
01:26:47 the fax number have to do with this? The fax is purely
01:26:51 hearsay.

01:26:51 MS. PEEBLES: Your Honor, I'm trying to
01:26:52 establish how he acquired this document.

01:26:55 THE COURT: Ask him that question.

01:26:57 **Q.** Do you recall how you acquired this document?

01:26:59 **A.** I acquired all of the documents from various people.

01:27:04 **Q.** Is there a fax on the top of that document, that's
01:27:07 what I'm asking, is there a fax?

01:27:08 **A.** Well, it says tel on it. Yes.

01:27:12 **Q.** And there's a number associated with that?

01:27:15 **A.** What, the -- the 423P44?

01:27:21 **Q.** Well --

01:27:22 **A.** Or the phone number itself?

01:27:23 MR. MOODY: I'm going to object. What does the fax number have to do with it?

01:27:26 THE COURT: Yeah, what's the fax number -- and I think it's irrelevant, it's a question of relevancy. What's the fax number have to do with it? Are you going to try to find out who he ultimately got it from?

01:27:36 MS. PEEBLES: Exactly. There is a fax on it. I want to know if it was faxed to him.

01:27:40 THE COURT: Can you just ask him that?

01:27:41 **Q.** Was this -- well, there's a fax number at the top. Was this document faxed to you, Mr. Bohrer?

01:27:47 **A.** No, it was not.

01:27:48 **Q.** Is there a fax reference at the top of that document?

01:27:51 MR. MOODY: Objection, Judge. What is the fax reference, if it wasn't faxed to him, what does the fax reference have to do with it?

01:27:56 THE COURT: You haven't laid any foundation if he knows what the fax is for one thing. I'm going to sustain the objection.

01:28:03 MS. PEEBLES: Well, it's in evidence.

01:28:04 THE COURT: It's in evidence for the fact that

01:28:06 it came out of his box and that's it.

01:28:07 MS. PEEBLES: Well, I think, Your Honor, that
01:28:09 I should be able to ask him where the fax came from.

01:28:11 THE COURT: Ask him that question.

01:28:13 **Q.** Where did the fax come from according to the
01:28:15 document?

01:28:18 MR. MOODY: Objection, Judge.

01:28:19 THE COURT: No, you can ask him where he got
01:28:22 the document from. There's been no foundation he has
01:28:24 any idea who that fax number is.

Q. Do you have any --

01:28:27 THE COURT: Hold it. The fax number is
01:28:28 hearsay. You're going beyond why you introduced it.
01:28:31 Sustained.

01:28:32 MS. PEEBLES: Again, I would disagree.

01:28:33 THE COURT: I understand.

01:28:34 **Q.** All right, Mr. Bohrer, do you have any recollection
01:28:38 of where you acquired that statement?

01:28:42 **A.** It could be from any one of several people. I did
01:28:46 not write on these copies which one came from what person.

01:28:54 **Q.** All right. Now, Mr. Bohrer, I'm going to hand you
01:28:56 what's been marked as Exhibit 52A and ask if you recognize
01:29:01 these documents as being in your box.

01:29:07 THE COURT: This is another statement, Ms.
01:29:08 Peebles?

01:29:09 MS. PEEBLES: It's a variation of Christopher Bivens' statement.

01:29:13 THE COURT: Okay.

01:29:18 **A.** They're official statements, and they're pertaining to the subject at hand.

01:29:25 **Q.** Okay, and the subject at hand --

01:29:27 **A.** And I established I had every single one at one time so.

01:29:39 **Q.** Did you view that as a -- did you view these documents, fifty-two and 52A as important documents?

01:29:45 MR. MOODY: I'm going to object, Judge. What does it matter his view of these statements?

01:29:49 THE COURT: I'm going to sustain.

01:29:50 MS. PEEBLES: They're his documents.

01:29:51 THE COURT: So who cares, he's not a police investigator, he thinks they're important or not?

01:29:56 MS. PEEBLES: I disagree. He labeled himself an investigator and I'm getting to that.

01:30:00 THE COURT: Sustained.

01:30:00 **A.** I was only concerned about --

01:30:02 THE COURT: Stop, stop. Sustained. With regard to the question regarding the importance is not relevant to whether or not Mr. Bohrer believes they're important.

01:30:12 **Q.** Why did you have these documents, Mr. Bohrer?

01:30:14 **A.** Because there were so many changes in the eyewitness
01:30:23 testimony. It went from blue to white van.

01:30:29 **Q.** And did you think that was a significant fact?

01:30:33 MR. MOODY: I'm going to object to what --

01:30:37 THE COURT: If you want to ask him why, why
01:30:39 does an important -- nothing against Mr. Bohrer, don't
01:30:42 take it wrong, Mr. Bohrer, whether or not he thinks
01:30:44 it's important? Does he work for one of the Sheriff's
01:30:46 Department, the FBI, the State Troopers?

01:30:48 MS. PEEBLES: Well --

01:30:50 THE COURT: If you want to -- if he's a
01:30:53 private investigator, get to that right now, then you
01:30:55 might be able to go back to these questions.

01:30:56 **Q.** Mr. Bohrer, did you consider yourself to be an
01:30:58 investigator? Did you consider yourself to be Investigator
01:31:01 A in this investigation?

01:31:04 **A.** A investigator.

01:31:08 **Q.** Mr. Bohrer, I'm going to hand you --

01:31:41 THE COURT: Can you give me fifty-two and take
01:31:43 back 52A then?

01:31:44 MS. PEEBLES: Yes.

01:31:45 THE COURT: Okay, thank you.

01:31:48 MS. PEEBLES: I took that 52A.

01:31:49 THE COURT: Oh, you did.

01:31:50 MS. PEEBLES: Yeah.

01:31:51 THE COURT: Can I have fifty-two then?

01:31:53 MS. PEEBLES: Yes.

01:31:54 THE COURT: Or just on the -- thank you.

01:32:37 **Q.** Mr. Bohrer, I'm going to hand you what's been marked 01:32:40 as Defendant's Exhibit 56 and ask if you can identify that 01:32:44 document for me.

01:32:45 **A.** Yes.

01:32:47 **Q.** What is that document?

01:32:49 **A.** This was a document that I wrote to express my 01:33:09 outrage as to missing Heidi Allen and how it was being 01:33:20 handled.

01:33:24 **Q.** Can you flip to the last page of that document? 01:33:28 When did you create that document?

01:33:36 MR. MOODY: Judge, is this document in 01:33:38 evidence now?

01:33:38 MS. PEEBLES: I haven't offered it yet.

01:33:40 THE COURT: She hasn't offered it. It's a 01:33:42 legitimate question.

01:33:44 **A.** Well, I don't know why the date isn't on the front 01:33:47 page where the title is because I would have. I don't know 01:33:53 why there isn't one on there.

01:33:55 **Q.** Are you saying that that didn't come out of your box 01:33:57 that you gave over to Investigator Pietroski?

01:34:05 **A.** Well, no, I'm -- I'm recognizing my writing.

01:34:08 **Q.** Okay, okay.

01:34:10 MS. PEEBLES: Your Honor, at this time I'd like to offer exhibit --

01:34:15 THE COURT: For what --

01:34:16 MR. MOODY: Can I see it?

01:34:17 THE COURT: Yeah, sure. Can we just confirm there's no date on it.

01:35:00 MR. MOODY: I have no objection.

01:35:01 THE COURT: Excuse me?

01:35:02 MR. MOODY: I have no objection.

01:35:03 THE COURT: Fifty-six.

01:35:04 MR. MOODY: Is there a limited purpose on this? Is this just to prove he had the box or --

01:35:09 MS. PEEBLES: No.

01:35:09 THE COURT: This is for introduction.

01:35:11 MS. PEEBLES: If it's in evidence, I'm going to ask him to read parts of it, it's in evidence. He wrote it. He wrote it.

01:35:17 THE COURT: That's part of the problem as to why he is going to -- you're going to ask him to read it in what capacity, as a citizen?

01:35:23 MS. PEEBLES: Well, let's ask him.

01:35:26 THE WITNESS: I -- at the time that I wrote --

01:35:28 THE COURT: There's no question. There's no question, sir.

01:35:30 **Q.** I'm going to hand you back what's been marked as

01:35:32 Exhibit 56.

01:35:33 MR. MOODY: Judge, if it's for the purpose
01:35:35 that he had it in his box, I have no objection. If
01:35:37 we're going to get into whatever is in the statement,
01:35:39 then I'm not sure how this isn't hearsay.

01:35:42 MS. PEEBLES: He's here to testify about what
01:35:44 he wrote. He just admitted that he crafted that
01:35:47 document.

01:35:47 THE COURT: Still an out of court statement,
01:35:50 Ms. Peebles.

01:35:50 MS. PEEBLES: He's here, Your Honor, it's
01:35:52 admissible.

01:35:52 THE COURT: He can testify to what he said,
01:35:54 not read it.

01:35:54 MS. PEEBLES: He just agreed to let it in.

01:35:56 MR. MOODY: Because I thought it was for the
01:35:58 purpose it was in the box. I'm sorry that I
01:35:59 misunderstood, but we wouldn't --

01:36:01 THE COURT: Let's back up. Let's back up.
01:36:03 Stop. You're moving it in.

01:36:05 MS. PEEBLES: I'm moving it in.

01:36:05 THE COURT: We're beyond the issue of whether
01:36:07 or not it came out of Mr. Bohrer's --

01:36:09 MS. PEEBLES: I want to question him about
01:36:10 what he wrote in there. I think I'm entitled to it.

01:36:12 THE COURT: And your objection is it's
01:36:14 hearsay.
01:36:15 MR. MOODY: Essentially, yes.
01:36:16 THE COURT: I'll let it in. I'm not sure what
01:36:20 weight I'm going to give it. It's written by somebody
01:36:21 who is not an investigator.
(Defendant's Exhibit No. 56 was received in
01:36:23 evidence).
01:36:23 **Q.** All right, flip to the last page of that document.
01:36:29 Did you refer to yourself on that page as Investigator A?
01:36:33 **A.** Yes, I did.
01:36:34 **Q.** Okay, and you wrote that, right?
01:36:36 **A.** Yes.
01:36:36 **Q.** And who is Investigator B?
01:36:38 **A.** Jim Beningfield (ph).
01:36:40 **Q.** Who is Jim Beningfield?
01:36:43 **A.** He was the investigator that the Allen family had
01:36:48 hired to investigate into the disappearance of Heidi.
01:36:54 **Q.** Did you --
01:36:55 **A.** From Texas.
01:36:56 **Q.** Did you tell people that you were an investigator on
01:36:59 behalf of the Allen family?
01:37:01 **A.** No, I never did.
01:37:02 **Q.** Who did you tell you were investigating the Heidi
01:37:08 Allen case?

01:37:10 **A.** I lived my life publically. I had no problem saying I'm looking into this. You got a sign in town saying where is Heidi, and I have to answer that with I don't know, but I'll find out, six times a day.

01:37:37 **Q.** Six times a day?

01:37:38 **A.** Pick a number. How many times do I go past the sign? I'm traveling with junk cars and metal.

01:37:47 **Q.** Do you still think about it six times a day?

01:37:50 **A.** Heck, no.

01:37:52 **Q.** When's the last time you thought about it six times a day?

01:37:56 MR. MOODY: Judge, I'm going to object. What does this have to do --

01:37:58 THE COURT: I'm going to allow it. Again, it's a weight issue.

01:38:01 **A.** When -- when they changed the sign.

01:38:05 **Q.** Do you remember when that was?

01:38:07 **A.** It was after I had an anxiety episode and the doctor asked me why I was so much into looking into what happened to Heidi.

01:38:31 **Q.** When was the anxiety episode?

01:38:34 **A.** And --

01:38:37 THE COURT: Stop, Mr. Bohrer. Do you need time to compose yourself, sir? Do you need five minutes?

01:38:42 THE WITNESS: No.

01:38:44 THE COURT: Take some time.

01:38:46 **A.** And I told him it's because of that damn sign.

01:38:56 **Q.** That sign really bothered you didn't it?

01:38:59 **A.** I always had to answer it. I don't know. But I'll 01:39:03 find out. It's just I'm a researcher from IBM. They ask 01:39:08 me a question that I don't know but I'll find out. It's 01:39:11 just the way I -- my brain works.

01:39:13 **Q.** You're getting pretty emotional. Why are you so 01:39:17 upset?

01:39:18 MR. MOODY: Objection, Judge.

01:39:19 THE COURT: Excuse me?

01:39:20 MR. MOODY: The gentleman's emotional. Do we 01:39:23 have to rehash why?

01:39:24 THE COURT: I'm going to sustain it. Do you 01:39:26 need time, sir?

01:39:30 THE WITNESS: No.

01:39:30 THE COURT: Are you sure?

01:39:31 THE WITNESS: Yep.

01:39:35 **Q.** So when you decided to become Investigator A, you 01:39:46 ever consult with a psychic?

01:39:50 **A.** Yeah. A self-proclaimed phychic approached me.

01:39:59 **Q.** And who was that?

01:40:00 **A.** Trudy Lortie.

01:40:02 **Q.** And who is she related to?

01:40:08 **A.** I guess the Lortie family?

01:40:13 **Q.** Very good, Mr. Bohrer. She related to the Halls at all do you know? Is she married to any of the Halls?

01:40:21 **A.** I don't remember. I thought Lortie is her married name.

01:40:31 **Q.** Okay, do you know what her maiden name is?

01:40:33 **A.** I have to assume now it was Hall?

01:40:36 **Q.** Well, I don't want you to assume anything. You either know or your don't.

01:40:39 **A.** I -- I didn't until now or I didn't remember until now. I'm sure I heard of it.

01:40:45 **Q.** And you -- you consulted with her for what particular reason?

01:40:54 **A.** She was interested in the Heidi Allen case. She had visions. She had an idea, you know. She had a story and I'm --

01:41:10 **Q.** Mr. Bohrer, I'm going to --

01:41:11 **A.** -- listening to stories.

01:41:12 **Q.** I'm going to approach and hand you what's been marked as Defendant's Exhibit 53. Do you recognize that document?

01:41:26 **A.** It's my handwriting.

01:41:32 **Q.** It is your handwriting isn't it?

01:41:34 **A.** Yeah. These are just notes to try to sort things out.

01:41:42 MS. PEEBLES: All right, at this time, Your Honor, I'd like to offer into evidence exhibit -- what's the number on there?

01:41:48 THE COURT: Fifty-three?

01:41:49 MS. PEEBLES: Fifty-three.

01:41:53 MR. MOODY: For what purpose? I guess I object to the relevance.

01:41:56 MS. PEEBLES: He just explained they were handwritten notes that he kept about the Heidi Allen case. I think it's relevant.

01:42:02 THE COURT: How?

01:42:04 MS. PEEBLES: How?

01:42:05 THE COURT: He's not an investigator. He's a gentleman who has a concern.

01:42:10 MS. PEEBLES: Judge, I think it's relevant. I'm offering it and --

01:42:13 THE COURT: How?

01:42:14 MS. PEEBLES: Because he has notes in there from a psychic about details surrounding Heidi Allen and her disappearance.

01:42:20 THE COURT: From his own testimony, that's a self-proclaimed psychic.

01:42:24 MS. PEEBLES: He wrote those notes. I want to ask him why. How is that not relevant? It goes to the heart of the matter.

01:42:30 THE COURT: It does?
01:42:30 MS. PEEBLES: Yes.
01:42:31 THE COURT: How?
01:42:31 MS. PEEBLES: How? We're here because we're
01:42:33 accusing them of being involved in Heidi Allen --
01:42:35 THE COURT: You are, nobody else is.
01:42:38 MS. PEEBLES: Well, Judge, he's here, I called
01:42:39 him as a witness, I'm asking him questions, he's
01:42:41 admitting it.
01:42:41 THE COURT: Admitting what? That he wrote the
01:42:45 notes?
01:42:45 MS. PEEBLES: Yes.
01:42:45 THE COURT: I'm sustaining. It's not
01:42:56 relevant.
01:43:02 MS. PEEBLES: Your Honor, we're contending
01:43:04 that the notes explain exactly what happened with Heidi
01:43:07 Allen, and we think it's relevant and we're moving it
01:43:10 into evidence.
01:43:11 THE COURT: You're asking to move it into
01:43:12 evidence.
01:43:12 MS. PEEBLES: Yes.
01:43:13 MR. MOODY: Objection. Now it's hearsay. Now
01:43:15 they're offering it exactly for the truth of the matter
01:43:18 asserted.
01:43:18 THE COURT: Sustained.

01:43:24 MR. MOODY: From the psychic.

01:43:25 **Q.** Those are your notes though, Mr. Bohrer, right?

01:43:28 MR. MOODY: Objection, Judge. It's not in
01:43:30 evidence.

01:43:30 THE COURT: He can identify the notes. Answer
01:43:33 the question, sir.

01:43:35 **A.** What is the question please?

01:43:36 THE COURT: Are those your notes?

01:43:38 THE WITNESS: Yes, they are.

01:43:39 **Q.** All those pages are your notes?

01:43:42 **A.** There's a couple of lines here I'm not recognizing
01:44:59 as my handwriting.

01:45:00 THE COURT: What page?

01:45:03 THE WITNESS: Top of page -- do I count both
01:45:07 sides of the page?

01:45:08 THE COURT: Is there handwriting on both
01:45:10 sides?

01:45:10 THE WITNESS: No, there isn't.

01:45:11 THE COURT: Count the pages that has writing
01:45:14 on it.

01:45:14 THE WITNESS: Only the last page has both
01:45:18 sides.

01:45:18 THE COURT: Okay.

01:45:19 THE WITNESS: So it would go one, two, the top
01:45:23 page, parenthesis, I would need to look at the original

01:45:29 documents. And second page I would have to look at the
01:45:38 original documents.

01:45:42 THE COURT: Okay.

01:45:42 THE WITNESS: The rest of it looks like
01:45:45 generally my handwriting because sometimes these things
01:45:52 are done separate days or different pen.

01:45:56 THE COURT: Okay.

01:45:57 THE WITNESS: I have to look at the original
01:45:58 document to concisely answer that for you.

01:46:03 **Q.** So what did you take away after you met with the
01:46:06 psychic, what was your -- what did you take away from that
01:46:11 conversation with the psychic?

01:46:12 **A.** What do you mean take away?

01:46:13 **Q.** Well, what was in your head after you talked with
01:46:15 the psychic?

01:46:16 **A.** Well, she was saying stuff that caught my attention,
01:46:28 information that I didn't think she would know being
01:46:40 somebody not directly involved in looking into Heidi's
01:46:49 disappearance in the detail that I was.

01:46:52 **Q.** Okay, so what -- what were some of the --

01:46:54 **A.** She caught my attention.

01:46:55 **Q.** Okay, how did she catch your attention? What --
01:46:58 what did you take away? Tell me what you you learned.

01:47:03 **A.** Well, at the time that I met her, I personally came
01:47:09 to the conclusion that these boys had nothing to do --

01:47:16 THE COURT: That's not responsive to the question. Ask the question again please, Ms. Peebles.

01:47:21 **Q.** What -- what did you take away from the consultation with the psychic?

01:47:31 **A.** She had a vision of what she believed happened.

01:47:43 **Q.** What was the vision?

01:47:44 MR. MOODY: I'm going to object, Judge. Hearsay.

01:47:46 THE COURT: Sustained. You can't answer the question.

01:47:52 **Q.** What was your -- what was your understanding after you met with her?

01:47:56 **A.** Say that again?

01:47:57 **Q.** What was your understanding after you met with her?

01:48:03 MR. MOODY: I'm going to object. Understanding about what?

01:48:06 THE WITNESS: There was possible credence.

01:48:07 THE COURT: Hold on. What was your objection, Mr. Moody?

01:48:09 MR. MOODY: Understanding of what?

01:48:11 THE COURT: Could you clarify that, Ms. Peebles, please?

01:48:14 **Q.** After you consulted with Trudy Lortie and you said that she had information that she couldn't have known, could you say what your understanding of that information

01:48:23 was, just your understanding, not what she said, but what you took away from that conversation.

01:48:31 **A.** I -- I guess I'm not understanding the terminology "took away."

01:48:40 **Q.** What was in your mind after you had that conversation with the psychic?

01:48:44 **A.** That she might have some credence into what might have happened.

01:48:52 **Q.** And did you -- did you jot those notes down, what she said?

01:48:58 **A.** Apparently. I -- I haven't read those pages. She -- so many documents got stollen.

01:49:18 **Q.** What -- what do you mean by that? What documents got stollen?

01:49:23 **A.** I had two sets, a master copy and the dupes. What the investigators have are the duplicates that would make up a second full set, but it was incomplete of everything that I had at that point before the documents were stollen.

01:49:51 **Q.** Can you give me a time frame of about when the documents were stollen?

01:49:57 **A.** No, I can't.

01:50:12 **Q.** Was it recently?

01:50:16 **A.** Today's time? Recently? Or --

01:50:21 **Q.** Well --

01:50:22 **A.** -- recently from when Heidi disappeared?

01:50:25 **Q.** From, well, recently from today I'm suggesting.

01:50:28 MR. MOODY: Can we have a time frame, weeks, 01:50:31 months, years?

01:50:32 MS. PEEBLES: That's what I'm asking.

01:50:33 THE COURT: She's trying to get down to that.

01:50:37 **A.** I mean I have been carrying these documents for 01:50:45 twenty years.

01:50:46 **Q.** I know that.

01:50:48 **A.** So I -- I guess I forgotten what question I'm 01:50:53 supposed to be answering.

01:50:54 **Q.** When -- when some of your documents were stollen, 01:50:58 you were calling some dupes and some originals. I was 01:51:04 questioning you as to time frame when did those documents 01:51:05 get stollen?

01:51:08 **A.** The complete set.

01:51:09 **Q.** The complete set.

01:51:11 **A.** It was before Gary's trial.

01:51:22 **Q.** Somebody stole your documents?

01:51:25 **A.** Yes.

01:51:27 **Q.** Did you ever find out who?

01:51:28 **A.** No. They stole the briefcase containing everything.

01:51:32 **Q.** From -- where was the briefcase when you realized it 01:51:37 had been stollen?

01:51:38 **A.** I was living at Spinners, and I usually would have 01:51:45 dinner or lunch, and I always had the briefcase with me, 01:51:52 and one night I was sitting on the stool, there were a couple guys to the left of me, and I thought I had an epiphany of whoa, I think I really starting to see something form here.

01:52:16 **Q.** Yeah, what was that?

01:52:18 **A.** Gary didn't do it.

01:52:23 **Q.** When did you have that epiphany?

01:52:26 **A.** Well, that's the documents that are in the set.

01:52:32 **Q.** The set that was stollen?

01:52:34 **A.** Yeah.

01:52:35 **Q.** Okay.

01:52:36 **A.** The stuff that got stollen had timelines, detailed timelines of people that were present at the convenience store that Sunday.

01:52:52 **Q.** And you created those timelines?

01:52:55 **A.** Based on the statements, because the statements contained times when people left their home, when they got to A&W, not A&W, D&W, and I believe that there was a pattern that was amazing.

01:53:22 **Q.** What was the pattern that you thought was amazing?

01:53:26 **A.** They all had twenty minutes unaccounted for.

01:53:29 **Q.** Who did?

01:53:31 **A.** The individuals on the list.

01:53:35 **Q.** Do you remember who the individuals were that were on the list?

01:53:40 **A.** They were based on the statements that people came forward with that were there that Sunday morning when they discovered that there was no cashier at the register, so I decided well, let's see how long it takes to go from here to there. The only one I couldn't get an accurate timeline was Deputy Curtis because technically he wasn't officially clocked in yet.

01:54:23 **Q.** Well, how did you know that?

01:54:25 **A.** You have to look at Pat Granger's statement. She's the one that introduced information about Deputy Curtis's events. Before any officer had arrived, she announced that there's a girl missing here and -- am I supposed to tell you what was on her statement?

01:55:03 **Q.** I'm not asking you what was on her statement, no. So you create this timeline and you make these notes. I asked you before about whether or not you knew where the schedule was for the employees at the D&W. Do you remember when I asked you that?

01:55:20 **A.** Yes.

01:55:58 THE COURT: Is this a new exhibit to be marked?

01:56:00 MS. PEEBLES: This is going to be new that I'm marking.

01:56:02 THE COURT: You're on one-twenty-nine right now.

01:56:04 MS. PEEBLES: So this will be one-twenty-nine.
01:56:06 THE COURT: That would be one-thirty. Excuse
01:56:08 me, one-thirty.
(Defendant's Exhibit No. 130 was marked for
01:56:10 identification).
01:56:10 **Q.** Mr. Bohrer, I'm going to hand you what's been marked
01:56:13 as Defendant's Exhibit 130 and ask if you can identify that
01:56:16 document.
01:56:18 **A.** Oh. This is the first one I wrote.
01:56:32 **Q.** Is there a signature on there?
01:56:36 **A.** Printed by a printer signature. Oh. Oh. Joyce
01:56:46 Babbitt. Yeah. She liked me.
01:56:51 **Q.** Who -- who is that?
01:56:53 **A.** She was my neighbor across the -- where I lived at
01:57:00 the ranch home. I'm sorry, but she passed away.
01:57:07 **Q.** Do you need to take a minute, Mr. Bohrer?
01:57:12 THE COURT: Why --
01:57:13 **A.** Yeah.
01:57:13 THE COURT: Why don't we take a ten-minute
01:57:15 recess. Court's in recess.
01:57:28 (Whereupon, there was a recess.)
01:59:10 THE COURT: Mr. Bohrer, consider the fact that
02:07:23 you're still under oath, sir, okay?
02:07:24 THE WITNESS: Yes.
02:07:25 THE COURT: We're on, if I'm right, Defense

02:07:27 Exhibit 130, correct?
02:07:29 MS. PEEBLES: Yes, that's correct.
02:07:30 **Q.** And Mr. Bohrer, I was just asking you some questions
02:07:32 about Defense Exhibit 130.
02:07:35 THE COURT: Hold on. We're not live. I
02:07:38 apologize.
02:07:43 **Q.** Mr. Bohrer, I was just asking you some questions
02:07:46 about Defense Exhibit 130 that I handed you the document?
02:07:49 **A.** Yes.
02:07:50 **Q.** And is that a signed document?
02:07:54 **A.** There is a signature, yes.
02:07:57 **Q.** Whose signature was that?
02:07:59 **A.** Joyce Babbitt.
02:08:01 **Q.** And is there a date on that document?
02:08:05 **A.** Yes, there is.
02:08:05 **Q.** And did she type that document for you?
02:08:08 **A.** No, she didn't.
02:08:10 **Q.** How did you get your hands on that document?
02:08:13 **A.** I printed it from my -- my printer.
02:08:18 **Q.** Okay, where was that document created?
02:08:23 **A.** From my computer to my printer across the street
02:08:28 from where this woman lived.
02:08:32 **Q.** Okay, and how did you print -- where was that
02:08:36 document when you printed it? Was it on your computer or
02:08:39 somebody else's computer that was e-mailed to you? How did

02:08:42 you get -- how did you acquire that to print?

02:08:44 **A.** It would have -- it would have been my printer.

02:08:54 **Q.** Was that saved onto your computer, I guess that's my
02:08:59 question.

02:09:00 **A.** Yeah, it would have been.

02:09:09 **Q.** And that was in your box of materials relating to
02:09:12 the Heidi Allen case?

02:09:15 **A.** I don't understand the question.

02:09:17 **Q.** Was that document in the box that you turned over to
02:09:22 Investigator Pietroski and Investigator Johnson on March
02:09:25 twenty-first of 2013?

02:09:28 **A.** Yes. Oh, no. This couldn't have been.

02:09:33 **Q.** Couldn't have been? So you're denying that that was
02:09:38 in the box?

02:09:40 **A.** If -- if Joyce's name on it, then this would have
02:09:49 been her copy.

02:09:52 **Q.** Well, how did Investigator Pietroski and
02:09:54 Investigator Johnson get ahold of that document?

02:09:57 MR. MOODY: Objection, Judge, foundation.

02:09:59 THE COURT: I'm going to sustain unless you
02:10:00 can lay some foundation how he has knowledge they got a
02:10:03 hold of it.

02:10:04 **Q.** Well, Mr. Bohrer, you gave your box of Heidi Allen
02:10:10 material to Investigator Johnson and Pietroski on March
02:10:14 twenty-first of 2013?

02:10:20 **A.** Yeah.

02:10:22 **Q.** And that document was in that box?

02:10:27 **A.** I didn't do an inventory before I gave it to them.
02:10:32 I just grabbed everything and gave it to 'em. I didn't
02:10:36 sort through it.

02:10:37 **Q.** But you're acknowledging that you printed that
02:10:40 document off from your computer?

02:10:43 **A.** Is this the original print? Or a copy.

02:10:49 **Q.** You tell me.

02:10:52 **A.** My eyes are bad. I can't tell. It looks like a
02:11:07 photocopy.

02:11:09 **Q.** Does that look like a photocopy of a document that
02:11:12 you had in your box that you gave to Investigator Pietroski
02:11:16 and Investigator Johnson?

02:11:20 **A.** I don't understand the question.

02:11:22 **Q.** Does that look like a photocopy of a document that
02:11:27 was in the box of items that you gave to Investigator
02:11:32 Pietroski and Investigator Johnson on March twenty-first of
02:11:35 2013?

02:11:40 **A.** I -- I can't answer that question. I -- I don't
02:11:50 know if this particular document that I'm holding in my
02:11:53 hand was actually in the box. I'm assuming it was.

02:12:00 **Q.** And you're assuming it was because?

02:12:02 MR. MOODY: Judge, I'm going to object. We
02:12:05 have the box here if he wants to answer that question.

02:12:07 MS. PEEBLES: Fine, I'll take the box.
02:12:09 MR. MOODY: But then my question is what is
02:12:11 the -- I mean are we just trying to determine --
02:12:14 THE COURT: I don't know, even know what it is
02:12:16 at this point.
02:12:17 MR. MOODY: The other question is what's the
02:12:18 relevance of it?
02:12:21 **Q.** Mr. Bohrer, do you recognize that document?
02:12:23 MR. MOODY: I have an objection. What is the
02:12:25 relevance of this document?
02:12:26 THE COURT: Let's see if he can identify it
02:12:30 first.
02:12:33 **A.** I recognize this as my -- my literature.
02:12:44 **Q.** Okay.
02:12:47 **A.** However, it looks like it's a carbon copy.
02:12:49 **Q.** Okay.
02:12:50 **A.** Or a photocopy.
02:12:52 **Q.** It's a photocopy.
02:12:55 MS. PEEBLES: Your Honor, at this time I'd
02:12:55 like to offer Defense Exhibit 130.
02:12:58 MR. MOODY: I'm going to object. I haven't
02:13:00 seen the document and I'm going to -- I still don't
02:13:02 know the relevance of it is.
02:13:04 MS. PEEBLES: I will show you the document.
02:13:06 THE COURT: Show it to Mr. Moody, the document

02:13:10 please.

02:13:21 MR. MOODY: Judge, I object to the relevance. I don't see what the relevance of this is, and hearsay. He's established -- he's not sure I guess, he hasn't established it was in his box. I don't see the relevance.

02:13:33 MS. PEEBLES: It's his.

02:13:34 THE COURT: Go ahead.

02:13:35 MS. PEEBLES: It's his literature he said.

02:13:37 THE COURT: I'm going to sustain based on hearsay.

02:13:40 **Q.** You wrote this document though, right?

02:13:42 THE COURT: It does not fit into any exception of hearsay.

02:13:45 **Q.** This is your document?

02:13:46 MR. MOODY: Objection. It's still hearsay.

02:13:48 MS. PEEBLES: I'm not asking him what's in the document.

02:13:53 THE COURT: Sit down. Answer the question.

02:14:00 **A.** I don't know if she's meaning is this the document or is this a copy of the document that's been --

02:14:11 **Q.** Is this a copy of a document --

02:14:12 **A.** -- passed around or is this the copy that's in the --

02:14:17 THE COURT: Mr. Bohrer, let the attorney ask

02:14:19 the question to clarify.

02:14:23 **Q.** Is this a copy of the document that you had in your
02:14:29 box that you turned over to Investigator Pietroski and
02:14:33 Investigator Johnson on March twenty-first of 2013?

02:14:41 **A.** It looks like a copy of something that I wrote.

02:14:50 **Q.** When you wrote this document, did you put in this
02:15:07 document that you wondered that she, Heidi Allen, referring
02:15:12 to Heidi Allen, was not on the schedule, so you wondered
02:15:15 how anyone knew she was scheduled to work that day?

02:15:19 THE COURT: Hold on. Don't object because I
02:15:22 don't think I understand the question before you stand
02:15:23 up and object. Can you rephrase the question? I
02:15:26 didn't understand the question.

02:15:27 MS. PEEBLES: I'll rephrase it.

02:15:28 THE COURT: Thank you.

02:15:29 **Q.** As part of your literature, did you adopt the
02:15:34 statement, you yourself, that you wondered how anyone knew
02:15:43 she was working that day because she wasn't on the
02:15:47 schedule?

02:15:48 MR. MOODY: I'm going to object, Judge. I
02:15:50 don't see the relevance of this, and I don't see how
02:15:52 she -- is she refreshing her recollection with the
02:15:54 question because it's also leading.

02:15:58 THE COURT: I'm going to sustain the
02:16:00 objection.

02:16:03 MS. PEEBLES: For the record, I'm asking him
02:16:05 if he's adopting that statement that's in his
02:16:07 literature.

02:16:10 THE COURT: We don't know if it's in the
02:16:12 literature. You're saying it's in the literature. I
02:16:15 don't know if it's in the literature.

02:16:16 MS. PEEBLES: I'm asking him the question if
02:16:19 he adopts that statement.

02:16:20 THE COURT: What statement? You're presuming
02:16:21 there's a statement in the literature. I don't know
02:16:23 there is a statement in the literature.

02:16:25 MS. PEEBLES: Well, if I could move this
02:16:26 document into evidence, we would all know.

02:16:28 THE COURT: Well, you could if it doesn't
02:16:29 violate the rules of hearsay.

02:16:32 MS. PEEBLES: Well, I disagree with the Court.

02:16:33 THE COURT: I understand that.

02:16:36 **Q.** Does this document reflect your investigative
02:16:44 efforts into the disappearance of Heidi Allen?

02:16:48 **A.** It -- it would have to because that's all I was
02:17:03 doing was trying to find out what happened to Heidi. I had
02:17:11 a lot of people coming forward and giving me bits and
02:17:16 pieces of stuff and --

02:17:22 **Q.** And you said that the psychic that you were
02:17:27 conferencing with knew things that she shouldn't know. You

02:17:32 said that earlier when I was asking you questions about
02:17:34 her, do you remember that?
02:17:35 **A.** It appeared to me that she -- she had a lot of
02:17:43 details that if she was -- I'm assuming she's telling me
02:17:52 this came from her head, you know, it just -- I don't know.
02:18:12 She was just a woman that -- that said hi, my name is
02:18:16 Trudy, and she introduced herself as somebody who had
02:18:25 psychic ability, that's it, and oh, I guess the thing that
02:18:36 intrigued me, is that what you're asking?

02:18:39 **Q.** Yes.

02:18:40 **A.** I heard the same story line from someone else that
02:18:47 she was repeating to me as the psychic.

02:18:52 **Q.** But you took away from the conversation with her
02:18:55 that she knew things that she shouldn't have known, fair?

02:19:00 MR. MOODY: Objection, Judge, leading.

02:19:02 THE COURT: I'll allow it.

02:19:04 **A.** Well, she didn't know who has talked to me about
02:19:11 what in the -- in the previous of meeting her. That's what
02:19:22 intrigued me. Like I've heard the same story, when you're
02:19:27 investigating something, and you're looking for
02:19:34 commonalities.

02:19:35 **Q.** Did anyone hire you as an investigator?

02:19:37 **A.** No.

02:19:38 **Q.** Now, in addition to Joyce Babbitt on exhibit --
02:19:43 Defense Exhibit 130, your signature is on this document

02:19:45 too, correct? Do you need to look at it, Mr. Bohrer?

02:19:52 **A.** Yeah. Yep. That's my signature.

02:20:07 **Q.** Is your signature on every page of that document?

02:20:14 **A.** Yep. Yeah.

02:21:19 **Q.** Is the date on every page of that document?

02:21:21 **A.** Yes.

02:21:22 **Q.** And you wrote this in 1996?

02:21:29 **A.** That's what it says.

02:21:32 **Q.** Now, Mr. Bohrer, in 1996, did you visit Gary
02:21:50 Thibodeau in the Clinton Correctional Facility in
02:21:55 Dannemora?

02:22:07 **A.** I think I wrote that document way earlier than that.

02:22:13 **Q.** Okay, I'm not asking you about the document, I'm
02:22:16 asking if you ever went to visit Gary Thibodeau in 1996 at
02:22:22 Clinton Correctional Facility in Dannemora.

02:22:26 **A.** I don't recall the year.

02:22:30 **Q.** Did anybody go with you?

02:22:31 **A.** Yes.

02:22:32 **Q.** Who?

02:22:33 **A.** Trudy Lortie.

02:22:35 **Q.** And why did you take Trudy Lortie to visit Gary
02:22:39 Thibodeau in the Clinton Correctional Facility?

02:22:42 **A.** She begged me to take 'em there because she wanted
02:22:48 to get a psychic feel if he did it or not.

02:22:53 **Q.** Did you feel bad for Gary Thibodeau when you went to

02:22:56 visit him at the Clinton Correctional Facility?
02:22:59 MR. MOODY: I'm going to object, Judge.
02:23:00 THE COURT: Sustained.
A. Well --
02:23:05 THE COURT: Don't answer the question.
THE WITNESS: Don't?
02:23:09 THE COURT: Don't please.
02:23:13 **Q.** Let me ask you this. Did Gary Thibodeau know that
02:23:16 you were going to the Clinton Correctional Facility to
02:23:18 visit him?
02:23:19 MR. MOODY: Objection to what -- how she can
02:23:21 tell what Mr. Thibodeau did or did not know.
02:23:23 THE COURT: She can lay a foundation.
02:23:25 **Q.** Mr. Bohrer, did you notify Mr. Gary Thibodeau that
02:23:31 you were going to come see him at the Clinton Correctional
02:23:34 Facility?
02:23:34 **A.** No.
02:23:34 **Q.** You just showed up there?
02:23:38 **A.** Yes.
02:23:38 **Q.** Did you only show up there one time?
02:23:43 **A.** Yes.
02:23:44 **Q.** I'm going to ask you some questions now about an
02:24:07 individual by the name of Dan Barney. Do you know who Dan
02:24:10 Barney is?
02:24:10 **A.** Yes, I do.

02:24:11 **Q.** And how do you know Dan Barney?

02:24:15 **A.** He punched out Joyce Babbitt's son-in-law.

02:24:28 **Q.** Is that how you know him?

02:24:29 **A.** Yes.

02:24:30 **Q.** Okay, when did that happen?

02:24:32 **A.** It's -- it's hard to put events at on or before. I
02:25:05 I don't remember when that occurred.

02:25:09 **Q.** Do you have any recollection as to whether it was in
02:25:12 the nineteen-nineties or past the year 2000?

02:25:15 **A.** No, would have been the nineteen-nineties because I
02:25:22 was living on Mason Road.

02:25:23 **Q.** What -- what year were you living on Mason Road?

02:25:26 **A.** Ninety-one to -- I don't remember when I moved out
02:25:44 of it.

02:25:46 **Q.** So did -- is that the only time you ever had any
02:25:54 encounters with Mr. Barney?

02:25:56 **A.** I -- that wasn't an encounter. I learned of him.

02:26:02 **Q.** I see. Were you present when anything occurred or
02:26:07 you just heard about it?

02:26:08 **A.** No.

02:26:10 **Q.** Have you ever met Dan Barney?

02:26:14 **A.** I had the -- on one occasion.

02:26:23 **Q.** Okay, so you actually met him on one occasion.

02:26:26 **A.** Um hum.

02:26:27 **Q.** Okay, can you tell me when that was to the best of

02:26:29 your recollection?

02:26:30 **A.** Probably the next day after he had punched Don out
02:26:39 he -- I made a comment, and somebody told him my comment,
02:26:47 and he wanted to bash my face in. I was at Spinners.

02:26:55 **Q.** And you -- you encountered him at Spinners?

02:26:59 **A.** That was the -- yeah, the first time I actually seen
02:27:03 this guy.

02:27:03 **Q.** Was that the first and last time you ever saw him?

02:27:07 **A.** Yeah.

02:27:12 **Q.** In your notes do you make reference to Dan Barney,
02:27:26 do you recall?

02:27:27 **A.** I'm answering that because I been reminded. I don't
02:27:46 know how to answer that question.

02:27:47 **Q.** Honestly? Just answer it honestly.

02:27:53 **A.** Can you say the question again?

02:27:55 **Q.** Did you refer to Dan Barney in your notes?

02:27:59 **A.** Yes, I have.

02:28:00 **Q.** And those notes were in connection with your
02:28:03 investigation with Heidi Allen?

02:28:06 **A.** They would have to be I believe.

02:28:12 **Q.** Do you refer to this bloodstone ring? You ever hear
02:28:29 of that?

02:28:29 **A.** Yes.

02:28:30 **Q.** And when you reference that, is that the same page
02:28:32 that you had Dan Barney's name on?

02:28:36 MR. MOODY: I'm going to object, Judge. Now she's reading from a document that's not in evidence and asking him --

02:28:40 THE COURT: Sustained.

02:28:41 **A.** I don't have photo --

02:28:43 THE COURT: No, don't answer the question.

02:28:45 **Q.** Well, let me ask you this. When you were questioned by Investigator Pietroski and Investigator Johnson in March of 2013, on March twenty-first, did you tell them to beware of the man with a bloodstone ring?

02:29:02 **A.** I told them that was a quote from Mark Hall.

02:29:06 **Q.** But you mentioned the bloodstone ring?

02:29:09 **A.** Yes, I did.

02:29:10 **Q.** Now, Mark Hall, you mentioned Mark Hall. Is Mark Hall in any way related to Trudy Lortie that you know of whether by blood or marriage?

02:29:22 **A.** I don't know that she was.

02:29:31 **Q.** Did you -- do you recall as part of your investigation writing down "who dropped the card?"

02:29:55 MR. MOODY: Objection, Judge. Leading and relevance.

02:29:58 THE COURT: Hold on for a second. I didn't hear your objection. What's your objection?

02:30:02 MR. MOODY: It's leading. Source of knowledge and -- and relevance.

02:30:05 THE COURT: It's not leading, but foundation,
02:30:09 I'd grant you that one. Lay some foundation if you
02:30:15 can, Ms. Peebles.

02:30:15 **Q.** When you were doing your investigation between 1994
02:30:18 and 1996, and you were jotting things down, taking notes,
02:30:30 yes or no?

02:30:32 **A.** Yeah, you seen.

02:30:38 **Q.** And part of the notes, do you recall writing down
02:30:44 "who dropped the card," do you recall that?

02:30:47 MR. MOODY: Objection, Judge, relevance.

02:30:49 THE COURT: Well, she hasn't laid a foundation
02:30:52 he actually knows. He can say what he thinks but he
02:30:55 has no foundation how he knows that. No foundation
02:30:58 properly laid yet.

02:30:59 **Q.** Well, you were doing an investigation in this case,
02:31:01 you're saying you did, right, correct?

02:31:05 **A.** Yes.

02:31:07 **Q.** All right, tell me the years that your investigation
02:31:10 spanned, from when to when?

02:31:16 **A.** I guess for twenty years. Whenever something popped
02:31:33 up.

02:31:36 **Q.** You wrote it down?

02:31:38 **A.** No.

02:31:42 **Q.** But if it was important to you in terms of your
02:31:44 investigation, you would write it down?

02:31:48 **A.** I would have to assume so.

02:31:58 **Q.** Well, I don't want you to assume. Did you?

02:32:07 **A.** Repeat the question please.

02:32:09 **Q.** As part --

02:32:11 MS. PEEBLES: Could you read that back please?

02:32:13 (Whereupon, the court reporter read back the
02:32:33 last question).

02:32:34 THE WITNESS: Can you repeat it please?

02:32:35 (Whereupon, the court reporter read back the
02:32:44 last question).

02:32:44 THE WITNESS: Can you say it slower please?

(Whereupon, the court reporter read back the
02:32:46 last question).

02:33:00 **A.** Mostly so I could remember and refer back to.

02:33:05 **Q.** And how often did you refer back to it?

02:33:11 **A.** When I felt I needed my memory refreshed.

02:33:14 **Q.** How often did you refresh your memory?

02:33:21 **A.** I don't know.

02:33:23 **Q.** Throughout the course of years between 1994 and
02:33:31 2013, how often did you look in the box of items that you
02:33:34 had in relation to Heidi Allen?

02:33:37 MR. MOODY: Judge, I'm going to object. I
02:33:38 don't see the relevance.

02:33:39 THE COURT: Sustained. Don't answer the
02:33:44 question, sir.

02:33:46 **Q.** On April third of 1994 you were -- we established you were living at the Spinners hotel, right?

02:33:58 **A.** I'm -- I'm getting --

02:34:15 **Q.** Do you need to take a break, Mr. Bohrer?

02:34:18 THE COURT: I don't think that's his testimony. I thought he had testified that soon after he spent sometime at Spinners, he then rented the four-bedroom ranch.

02:34:26 MS. PEEBLES: No. He went to a wedding at Spinners and then he went to the ranch and then he went back to Spinners.

02:34:31 THE COURT: Okay.

02:34:34 THE WITNESS: Yeah, but we're talking a span of years. I'm sorry but --

02:34:54 THE COURT: There's no question before you, sir, so please be quiet.

02:34:58 MS. PEEBLES: Well, there is actually, Judge.

02:35:00 THE COURT: Well, he answered he doesn't remember.

02:35:02 **Q.** Oh, now you don't remember living at the Spinners hotel on April third of 1994?

02:35:09 MR. MOODY: Objection, Judge.

02:35:11 MS. PEEBLES: No, I'm asking him if he doesn't -- now he doesn't remember. How is that argumentative?

02:35:16 THE COURT: I'm going to allow the question.
02:35:19 You can answer the question.

02:35:23 **A.** I've got so many numbers in my head right now I'm
02:35:29 confused where I'm at in time.

02:35:31 **Q.** Mr. Bohrer, you know that the interview with
02:35:35 Investigator Pietroski and Investigator Johnson on March
02:35:39 twenty-first of 2013 was recorded, you know that, right?

02:35:43 **A.** Yes.

02:35:45 **Q.** If you listened to that recording, would that help
02:35:50 refresh your recollection about where you were living on
02:35:52 April third of 1994?

02:35:57 **A.** I'm sorry, I'm --

02:36:19 THE COURT: Sir, do you need a couple minutes?

02:36:21 THE WITNESS: Yeah. My brain's turning to
02:36:23 rubber, Your Honor.

02:36:27 THE COURT: Okay, let's recess until ten of
02:36:30 three. Any objection?

02:36:31 MS. PEEBLES: No, that's fine . That's kind of
02:36:32 an in between -- Judge, I'm assuming that I'm not going
02:36:40 to get to Jennifer Wescott today so I'm going to let
02:36:43 her go if that's okay.

02:36:53 MR. OAKES: Your Honor, can we approach?

02:37:00 (Whereupon, there was an off the record
02:37:01 discussion at the bench).

02:51:26 (Whereupon, there was a recess.)

02:51:54 THE COURT: Mr. Bohrer was on the witness
02:51:56 stand when we adjourned. When we recessed, excuse me.
02:52:01 It would appear that at this time it would be best for
02:52:06 Mr. Bohrer to wait until -- resume his testimony
02:52:09 tomorrow morning at nine o'clock. I think everybody
02:52:12 involved would agree this is an extremely emotional,
02:52:15 difficult situation. Any objection from you, Ms. --
02:52:19 actually from the Public Defender Office.

02:52:22 MS. PEEBLES: No, Your Honor.

02:52:23 THE COURT: Mr. Oakes?

02:52:23 MR. OAKES: None from the People, Your Honor.

02:52:25 THE COURT: We're at three o'clock. We could
02:52:27 call another witness, but I think from a procedural and
02:52:30 tactical point of view, it serves both the Public
02:52:34 Defender and the People to put a witness on at this
02:52:36 time is a disadvantage for your direct, it's a huge
02:52:39 disadvantage for your cross, so there is no objection,
02:52:41 I'm going to adjourn for the day. I don't like wasting
02:52:44 an hour, but I think in light of just the nature of
02:52:46 this case, this is probably the best thing to do at
02:52:49 this time. Any objection from the defense?

02:52:51 MS. PEEBLES: No, Your Honor.

02:52:52 THE COURT: From the People?

02:52:53 MR. OAKES: No, thank you.

02:52:54 THE COURT: We stand in recess until nine

02:52:56 o'clock tomorrow morning. Ms. Peebles, you said you
02:52:59 may call a witness out of order.

02:53:01 MS. PEEBLES: May be calling one of our
02:53:04 cadaver dog experts.

(Conclusion of Proceeding).

* * *

CERTIFICATE

I, JENNIFER ADYDAN, an Official Court Reporter in and for the State of New York, Fifth Judicial District, do hereby certify that the foregoing is a true, complete and accurate transcript of my stenographic notes taken in the above-entitled matter and the whole thereof to the best of my ability.

Jennifer Adydan

Jennifer Adydan
Official Court Reporter

DATED: January 25, 2015

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF OSWEGO: CRIMINAL TERM:
--x
THE PEOPLE OF THE STATE OF NEW YORK

Indict. No.
94C-0161

HEARING
VOLUME 4

- against-

GARY THIBODEAU,

Defendant.
--x

Oswego County Courthouse
25 E. Oneida Street
Oswego, NY 13126

DATE: January 15, 2015

Before:

HONORABLE DANIEL R. KING
Acting County Court Judge

Appearances:

GREGORY S. OAKES, ESQ.
District Attorney, Oswego County
MARK M. MOODY, ESQ.
Chief Assistant District Attorney

OFFICE OF THE FEDERAL PUBLIC DEFENDER
By: LISA PEEBLES, ESQ., Public Defender
RANDI JUDA BIANCO, ESQ., Assistant Public Defender

Defendant is present

08:43:13

08:43:13

INDEX TO WITNESSES

FOR THE DEFENDANT:	Direct	Cross	Redirect	Recross
Kathryn Bamford	522	542	560	564
Michael Bohrer	568	598	620	--
Danielle Babcock	631	635	636	--
Joe Mannino	637	645	660	664
Amanda Braley	667	676	--	--

INDEX TO EXHIBITS

		Identification	Evidence
FOR THE DEFENDANT:			
68.	Bamford report	--	536
68-A.	Hawk's certification	--	525
FOR THE PEOPLE:			
K.	Braley affidavit	692	--

09:21:14 THE COURT: Before we go forward today, we
09:21:16 have conferenced a number of matters in chambers, and I
09:21:19 want to place those matters on the record. The first
09:21:22 will be the issue of Jennifer Wescott. Ms. Wescott I'm
09:21:27 assuming was scheduled to testify today as a witness
09:21:30 for the Federal Public Defender, is that correct?

09:21:33 MS. PEEBLES: That's correct, Judge.

09:21:34 THE COURT: And this person is?

09:21:35 MS. PEEBLES: Our next witness.

09:21:36 THE COURT: Oh, okay. Can we hold her back
09:21:38 for awhile?

09:21:41 MS. BIANCO: Yes.

09:21:42 THE COURT: Thank you. The Court received a
09:21:43 phone call from Mr. Oakes yesterday afternoon about
09:21:47 4:10, actually my confidential attorney did, and
09:21:50 apparently, Mr. Oakes, Ms. Wescott spoke or attempted
09:21:53 to speak to you in detail and you kind of cut her off
09:21:55 and she said she wants an attorney. That's the message
09:21:58 we were conveyed. Is that correct and accurate?

09:22:00 MR. OAKES: That is, Your Honor.

09:22:01 THE COURT: In light of the fact that in
09:22:03 review of Ms. Wescott's statements that she may have or
09:22:08 may not have made declaration against penal interest,
09:22:13 the Court is going to assign her an attorney. That
09:22:15 does unfortunately delay or take your -- your schedule

09:22:19 of witnesses out of order. Any objection to the Court
09:22:22 appointing an attorney for Ms. Wescott?

09:22:25 MS. PEEBLES: No, Your Honor.

09:22:25 MR. OAKES: No, Your Honor.

09:22:26 THE COURT: I also disclosed to the parties
09:22:28 that I'm not a judge who sits in Oswego County so I'm
09:22:31 somewhat at a disadvantage regarding the Assigned
09:22:35 Counsel pool. We had a contact with an attorney last
09:22:37 evening who we had originally assigned to represent Mr.
09:22:40 Bohrer. He is unavailable, so we are going to go off
09:22:42 the list and start calling attorneys today. Any
09:22:45 objection?

09:22:46 MS. PEEBLES: No, Your Honor.

09:22:47 MR. OAKES: No.

09:22:48 THE COURT: Okay, next, Mr. Bohrer's attorney
09:22:53 please.

09:22:57 MR. WEGERSKI: Good morning, Judge. John
09:22:59 Wegerski, attorney for Michael Bohrer. Judge, as
09:23:02 you're aware, I approached the Court this morning and I
09:23:05 respectfully requested that I be allowed to make
09:23:06 objections during Mr. Bohrer's testimony. My request
09:23:10 is based upon amendments, recent amendments to the CPLR
09:23:13 including 3113 Section C which allows an attorney to --
09:23:19 an attorney for a non -- a non-party witness, counsel
09:23:23 to object during a deposition. Making the leap from a

09:23:28 deposition itself to a hearing of this nature, I'm
09:23:30 looking at the CPL itself, 60, Section 60 Subsection 10
09:23:34 which will allow the CPLR to govern the CPL in an
09:23:39 instance where there is not a direct point, law or rule
09:23:42 for that scenario.

09:23:44 THE COURT: Ms. Peebles, do you wish to be
09:23:45 heard?

09:23:46 MS. PEEBLES: We -- I would obviously object
09:23:48 to that request, Your Honor.

09:23:49 THE COURT: Mr. Oakes?

09:23:49 MR. OAKES: I do, I don't think it applies to
09:23:52 this situation, Your Honor.

09:23:53 THE COURT: Sir, we have researched the CPLR
09:23:58 and the CPL as they relate to this issue, and the Court
09:24:00 cannot make the leap from a pretrial deposition into a
09:24:05 hearing, I don't believe the courts at this point have,
09:24:09 whether the CPL is amended to that extent. I certainly
09:24:12 appreciate your effort on behalf of your client to
09:24:15 protect your client, but at this time the Court's going
09:24:16 to deny that request.

09:24:18 MR. WEGERSKI: Thank you, Judge.

09:24:19 THE COURT: Thank you, sir.

09:24:21 MR. OAKES: Excuse me, Your Honor, may I
09:24:22 approach with counsel?

09:24:24 THE COURT: Yes.

09:25:28 (Whereupon, there was an off the record discussion at the bench.)

09:25:36 THE COURT: Also yesterday, also yesterday a
09:25:42 motion was made by Mr. Oakes regarding exhibit --
09:25:46 Defendant's Exhibit 35, in particular, Ms. Tonya
09:25:51 Priest's statement that was contained in Exhibit 35.
09:25:54 Ms. Peebles argued that it should be allowed in as a
09:25:57 piece of evidence for the Court to consider as a
09:25:59 statement. Mr. Oakes argued that it was his intention
09:26:02 to limit its introduction to be more of a disclosure
09:26:06 issue only. The Court has researched the issue and the
09:26:10 Court is going to rule in favor of Ms. Peebles in this
09:26:12 case. Mr. Oakes, I know this is over your objection.
09:26:15 The Court feels as though you did not limit the
09:26:18 stipulation enough to qualify this as only a piece for
09:26:22 disclosure, not for the Court's consideration as a
09:26:25 statement, and I know that's over your objection,
09:26:29 correct?

09:26:29 MR. OAKES: That is correct, Your Honor, yes.

09:26:30 THE COURT: Ms. Peebles, I assume that's not
09:26:32 over your objection?

09:26:33 MS. PEEBLES: No, it's not, Your Honor. Thank
09:26:34 you.

09:26:34 THE COURT: Okay, the Court's going to need
09:26:36 about two minutes to give some information to Mr.

09:26:37 Lyndaker regarding Ms. Wescott that was provided by the
09:26:41 District Attorney's Office, okay? Mr. Miles, can I
09:26:54 speak to you for a second please?

09:26:56 MR. MILES: Sure.

09:26:57 (Whereupon, there was a pause in the
09:30:56 proceeding.)

09:30:56 THE COURT: Is Mr. Bohrer here?

09:31:03 MR. WEGERSKI: He's not here. He's on his
09:31:07 way. I did speak with him.

09:31:09 THE COURT: Do you want to call another
09:31:11 witness?

09:31:12 MS. PEEBLES: Yes, Judge, we'll call Kathryn
09:31:15 Bamford.

09:31:31 THE CLERK: Please step in the box, remain
09:31:33 standing. Please raise your right hand, place your
09:31:35 left hand over the Bible.

KATHRYN BAMFORD, Called as a witness, having
09:31:38 been duly sworn, was examined and testified as follows:

09:31:38 THE CLERK: Please state and spell your first
09:31:42 and last name for the record.

09:31:43 THE WITNESS: Kathryn, K-A-T-H-R-Y-N, Bamford,
09:31:49 B-A-M-F-O-R-D.

09:31:56 THE COURT: Ms. Bamford, I'm going to ask you
09:31:59 whether or not you consent to have your testimony
09:32:01 videotaped and audio taped.

09:32:02 THE WITNESS: Yes.

09:32:02 THE COURT: Thank you.

DIRECT EXAMINATION

09:32:03 BY MS. PEEBLES:

09:32:04 **Q.** Ms. Bamford, where are you currently employed?

09:32:07 **A.** I am the managing partner at Rochester Psychological 09:32:10 Associates in Fairport, New York, and have been in that 09:32:13 position since 2003.

09:32:15 **Q.** And how long have you been a psychologist in private 09:32:18 practice?

09:32:19 **A.** For seventeen years.

09:32:20 **Q.** Please tell us what your education and experience is 09:32:26 in the field of clinical psychology.

09:32:27 **A.** I have a Bachelor's from John's Hopkins University, 09:32:30 I have a Master's in neuroscience from the University of 09:32:32 Rochester. I have a doctorate in psychology from SUNY 09:32:37 Buffalo, and I did my clinical psychology internship at the 09:32:41 University of Rochester School of Medicine. My original 09:32:48 areas in academic research were cognitive neuroscience and 09:32:52 neuropsychology. Now in clinical practice I treat 09:32:58 psychological issues in adult patients. I also do some 09:33:03 pre-employment screening for high risk professions, and I 09:33:07 do forensic psychology evaluations.

09:33:11 **Q.** In addition to your work as a clinical psychologist, 09:33:14 are you also a member of the Massasauga Search & Rescue

09:33:18 Team?

09:33:18 **A.** Yes.

09:33:19 **Q.** What does the Massasauga Search & Rescue Team do?

09:33:22 **A.** Our team is a volunteer non-profit organization that
09:33:26 provides skilled field search personnel and search
09:33:31 management personnel and K-9 units to assist local, state
09:33:38 and federal agencies in that they request our assistance in
09:33:43 searching for lost and missing persons.

09:33:46 **Q.** And what is your position with the Massasauga Search
09:33:50 & Rescue Team?

09:33:50 **A.** I am elected as a board member serving as treasurer
09:33:55 since 2008. I'm also the K-9 training officer and I'm a
09:34:00 team leader.

09:34:01 **Q.** How long have you been a member of the Massasauga
09:34:05 Search & Rescue Team?

09:34:05 **A.** This year will be my thirteenth year.

09:34:07 **Q.** What type of training have you received as a K-9
09:34:11 search and rescue handler?

09:34:11 **A.** I started K-9 search and rescue training in 2003
09:34:16 with my first dog Cody initially. I did in-house training
09:34:23 with senior handlers, and then I started attending outside
09:34:27 workshops and seminars with K-9 master trainers all over
09:34:31 the east coast, the midwest, Michigan, Florida, I have even
09:34:38 been out in Oregon and trained down in Oregon. I have
09:34:43 attended for the last seven of eight years, I've attended

09:34:46 week long seminar at the International Police Work Dog
09:34:51 Association National Conference. I've attended a forensic
09:34:56 anthropology cadaver dog workshop at the Western Carolina
09:35:00 University, a clandestine grave workshop through the
09:35:04 forensic anthropology program at the University of Florida
09:35:08 in Gainesville. I've also taken online courses through
09:35:16 K-9, Maine K-9 Services, so overall I have attended about
09:35:23 forty-two outside workshops, continuing education programs
09:35:29 over the past twelve years.

09:35:31 **Q.** Are you currently working with a particular dog?

09:35:35 **A.** Yes. My current dog now is K-9 Hawk. My first dog
09:35:41 Cody is retired.

09:35:42 **Q.** What breed is Hawk?

09:35:43 **A.** Hawk's a Golden Retriever.

09:35:45 **Q.** And how long have you had Hawk?

09:35:48 **A.** He was born in October of oh-nine and I took him
09:35:53 home at eight weeks.

09:35:54 **Q.** Does Hawk have a pedigree?

09:35:56 **A.** Yes. He's registered with the American Kennel Club.

09:36:00 **Q.** Now, have you trained together with Hawk?

09:36:03 **A.** Yes. I've started his search and rescue training
09:36:09 in -- when he was about six months old.

09:36:11 **Q.** Please describe the various certifications regarding
09:36:16 the training that Hawk has been involved with.

09:36:21 **A.** Hawk is a certified odor detection dog for human

09:36:26 scent both live and deceased, so his wilderness air scent
09:36:32 training is for live and his human remains detection
09:36:37 certifications are for both land and water.

09:36:42 **Q.** I'm going to approach and hand you what's been
09:36:47 marked as defense Exhibit 68-A. (Showing to Mr. Oakes).

09:37:09 THE COURT: 68-A you said, Ms. Peebles?

09:37:13 MS. PEEBLES: A, yep.

09:37:16 **Q.** Ms. Bamford, I'm going to hand you what's been
09:37:19 marked as 68A and ask if you can identify what that exhibit
09:37:22 is.

09:37:22 **A.** These are the certifications, certificates for Hawk
09:37:27 in the areas of human remains detection that he's obtained.

09:37:32 MS. PEEBLES: Your Honor, at this time I'd
09:37:35 like to move 68-A into evidence.

09:37:38 MR. OAKES: No objection, Your Honor.

09:37:39 THE COURT: 68-A is in.

(Defendant's Exhibit No. 68-A was received in
09:37:40 evidence).

09:37:40 **Q.** Now what is the first certificate on the first page
09:37:43 of that -- first page of that exhibit, what is that
09:37:47 certification for?

09:37:49 **A.** The first page is his human remains crime scene
09:37:56 certification which he obtained in September of last year,
09:38:02 2014.

09:38:03 **Q.** And how about the second page?

09:38:07 **A.** The second page is his first HRD certification which he obtained in August of 2011. The third page is the advanced cadaver search which he obtained in August of 2012, and the last one is his certification in water recovery which he obtained in October of 2013.

09:38:37 **Q.** Now, in order for Hawk to get those certifications or those certificates, is he required to pass various tests?

09:38:47 **A.** Yes.

09:38:48 **Q.** And what were the results of his tests?

09:38:50 **A.** He passed all of them without a problem.

09:38:52 **Q.** Are you a member of a professional association for K-9 SAR or K-9 LE?

09:38:59 **A.** Yes. I'm a member of the International Police Work Dog Association.

09:39:03 **Q.** Is the International Police Work Dog Association recognized by the federal government as a certifying organization for search and rescue dogs?

09:39:11 **A.** Yes. NIMS, which is the National Incident Management System, and Typed Search & Rescue & Emergency Resources recognizes IPWDA, NPWDA, NASAR, USPCA and FEMA as certifying organizations for SAR K-9s.

09:39:29 **Q.** So when was Hawk first certified by the International Police Work Dog Association?

09:39:34 **A.** August of 2011.

09:39:36 **Q.** And does Hawk have to be periodically retested in
09:39:40 order to maintain his certifications with this
09:39:42 organization?
09:39:42 **A.** Yes, every two years in each discipline.
09:39:45 **Q.** And what does it mean to be certified as a cadaver
09:39:50 dog?
09:39:50 **A.** It means that the K-9 team, which is the handler and
09:39:54 dog, have been tested by a master trainer, K-9 master
09:40:01 trainer, using standardized testing that adheres to
09:40:07 industry standards and is found -- has been found to be
09:40:11 reliable in detecting the target odor of human remains and
09:40:16 locating the source within a reasonable distance.
09:40:19 **Q.** Is Hawk trained in charred remains of human -- for
09:40:25 human detection?
09:40:26 MR. OAKES: Objection. Leading, Your Honor.
09:40:27 THE COURT: I'll allow it.
09:40:29 **A.** Yes. Actually it's a source that we train on
09:40:34 routinely and also it is required because the -- one of the
09:40:39 tests for the certification process is a burn scenario, so
09:40:45 the dog has to be able to recognize charred remains.
09:40:49 **Q.** What is it that Hawk is searching for when he
09:40:53 conducts a cadaver search?
09:40:54 **A.** He is looking for the odor of decomposing human
09:41:01 remains, and when he gets that odor, if he follows it to
09:41:06 the highest concentration, he'll locate the source or some

09:41:11 area very close to the source.
09:41:13 **Q.** Have you worked together with Hawk in actual search
09:41:17 and rescue situations where Hawk was working as a cadaver
09:41:20 dog?
09:41:20 **A.** Yes. He's been on about fourteen recovery missions.
09:41:23 **Q.** And how has Hawk performed in those other cases?
09:41:26 **A.** He's performed very well, and even recently in March
09:41:31 of 2014 he located the body of a missing woman who was in
09:41:38 the partially iced over river, the Genesee River.
09:41:43 **Q.** Now I want to ask you about a search you conducted
09:41:46 on October twenty-third of 2014 in the woods off of Rice
09:41:51 Road. On that day, were you asked to perform a search with
09:41:54 your trained cadaver dog Hawk?
09:41:56 **A.** Yes.
09:41:56 **Q.** Who asked you to perform the search that day?
09:41:59 **A.** You did.
09:42:00 **Q.** When you went to Rice Road on October twenty-third,
09:42:03 2014, did any other K-9 team from the Massasauga Search &
09:42:09 Rescue Team also search the same area?
09:42:11 **A.** Yes. My teammate, Dana Malabar (ph), and his K-9
09:42:17 Libby also.
09:42:17 **Q.** So Dana Malabar is also a volunteer with you at the
09:42:20 Massasauga Search & Rescue?
09:42:22 **A.** Yes, that is correct.
09:42:23 **Q.** And how long has Dana been working with K-9 Libby on

09:42:26 your team?

09:42:27 **A.** Dana --

09:42:28 MR. OAKES: Objection. Objection, foundation.

09:42:31 THE COURT: Lay a foundation she has some
09:42:35 knowledge. Sustained.

09:42:36 **Q.** You mentioned that Dana Malabar volunteers with you
09:42:40 at the Massasauga Search & Rescue Team?

09:42:43 **A.** Yes.

09:42:44 **Q.** And when did he start working with you on the
09:42:46 Massasauga Search & Rescue Team?

09:42:48 **A.** He's been on the team I believe for ten years.

09:42:52 **Q.** Do you know whether Libby is also certified as a
09:42:57 police work dog for human remains detection?

09:43:01 MR. OAKES: Objection, Your Honor, hearsay.

09:43:03 THE COURT: I'll allow it. Can you lay some
09:43:06 foundation though as to why she would have some
09:43:08 knowledge of that?

09:43:08 THE WITNESS: I'm the K-9 training officer for
09:43:10 the --

09:43:10 **Q.** So as a K-9 training officer, explain to the Court
09:43:14 what exactly it is that you do in order for, you know, to
09:43:18 put the team together.

09:43:19 **A.** So the K-9 training officer just organizes the day,
09:43:23 you know, the month to month, week to week trainings and
09:43:26 making sure there's a schedule, and but we have standards,

09:43:31 and people have to meet those standards such as attendance
09:43:34 and I monitor that. Also all our dogs have to be certified
09:43:39 and kept up with their certifications in order to be
09:43:42 deployed, and since I'm usually deciding who is going to be
09:43:47 deployed on what searches, I have to know what dogs are up
09:43:51 to date, or if dogs are about to be in need of
09:43:55 recertification, I work with them in terms of making sure
09:43:58 that they're -- the training schedule is on and that we get
09:44:02 them recertified, so I'm aware of every dog on our team and
09:44:07 their certification status.

09:44:09 **Q.** And who -- who asked Dana to come along with the --
09:44:14 with you on the search on October twenty-third of 2014?

09:44:18 **A.** I did.

09:44:18 **Q.** And is there any particular reason that you chose
09:44:22 Dana Malabar and his dog Libby?

09:44:24 **A.** Dana has, you know, had a good record with the team.
09:44:30 His dog is very reliable. He's a very experienced handler
09:44:35 and the dog is very experienced.

09:44:38 **Q.** Do you have knowledge regarding Libby's experience
09:44:41 on other case -- Libby's results on other cadaver searches
09:44:45 and how she performed?

09:44:46 **A.** Yes, Libby's --

09:44:48 MR. OAKES: Objection. Hearsay, Your Honor.

09:44:50 THE COURT: She asked if she had any knowledge
09:44:51 so I'm going to hear the answer, the dog trainer

09:44:55 assuming --

09:44:56 THE WITNESS: Yes, yes, I do.

09:44:57 **Q.** And were you personally present when that took
09:45:00 place?

09:45:00 **A.** I'm sorry, when what took place?

09:45:03 **Q.** When -- have you ever been in a search, a cadaver
09:45:06 search with Libby and Dana aside from October twenty-third
09:45:10 of 2014?

09:45:10 **A.** Yes.

09:45:11 **Q.** And so are you aware of how Libby was performing?

09:45:15 **A.** Yes.

09:45:15 **Q.** And how did Libby perform?

09:45:17 **A.** Libby's been on approximately thirty-five or so
09:45:25 recovery missions, and she has recovered four deceased
09:45:32 victims, and she has recovered the bones of another cold
09:45:39 case victim as well as having located actually one living
09:45:44 person that we thought was supposed to be dead but was
09:45:47 hiding.

09:45:49 **Q.** Thank you. Who else was present on October
09:45:52 twenty-third of 2014 other than Dana and his dog Libby?

09:45:56 **A.** You and Randy Bianco.

09:45:59 **Q.** Describe if you will the area you were asked to
09:46:01 search.

09:46:02 **A.** It was an area about four-hundred feet south of Rice
09:46:08 Road on the south side of a small creek. It was a small

09:46:12 area inside a woodlot, area was about a quarter to a third 09:46:17 of an acre large. It was strewn with manmade debris that 09:46:22 looked like it had come from a collapsed structure. The 09:46:27 center of the area had been flattened and was just dirt 09:46:32 without any vegetation, and it looked like that the -- some 09:46:37 machine had come in and flattened it and moved the soil 09:46:42 which was slightly mounded along the sides.

09:46:45 **Q.** Once you arrived at the site, describe how you 09:46:49 conducted the search.

09:46:50 **A.** Well, the first thing I did was assess the scene for 09:46:53 safety, and then when I determined there were no safety 09:46:57 issues, I determined which direction the wind was coming 09:47:01 from which was basically north, it varied north/northeast, 09:47:07 north/northwest, and using that information, I planned my 09:47:11 search so that I would start from the south end moving 09:47:14 northward so that I could quarter the wind for Hawk.

09:47:21 **Q.** Now, what did you observe Hawk do as he searched?

09:47:24 **A.** So after I released him with his search command, he 09:47:29 started ranging out, made a couple of passes through the 09:47:32 area, and on one pass by a large tree, he suddenly stopped, 09:47:40 turned around a hundred and eighty degrees, went back to 09:47:43 the tree with his head held high, and his sniffing pattern 09:47:48 had changed, he was sniffing up the trunk, then he sniffed 09:47:52 down below the trunk to the area which was part of the 09:47:56 flattened dirt area. He continued to move along the dirt

09:48:01 sniffing very intensely, pawing at it a little bit, and he moved northward along this entire area of dirt, paying, you know, very intense. He gets up to a little area that's like a mounded area at the end, and there's a branch or a root there, and he started sniffing very intensely there, dug a little bit with his paw, snorted in the soil, and then he downed, and when he downed, that's his indication that he had detected the odor of human remains.

09:48:37 **Q.** Where was K-9 Libby and handler Dana Malabar when you commanded Hawk to search?

09:48:43 **A.** He stayed back at a distance where he would not be able to see the search I conducted with Hawk. The purpose of this was so that Dana would not be biassed by having observed what Hawk was doing.

09:48:56 **Q.** And was there a way in which to communicate with Mr. Malabar to let him know when we were done?

09:49:04 **A.** Yes, we both had radios.

09:49:06 **Q.** Now please explain the difference between an alert versus as you just testified an indication?

09:49:11 **A.** An alert is a change in the dog's natural behaviors that are clearly visible as they're searching for odor and they come into odor. These changes can include the changes in the dog's speed and direction, changes in the dog's posture and body carriage, and importantly, changes in the dog's sniffing pattern.

09:49:34 **Q.** Now, when Hawk gave an indication, he went down, so what does that mean to you?

09:49:40 **A.** So the indication is a trained behavior that the dog 09:49:46 uses to communicate when the dog is in odor, and for 09:49:51 cadaver dogs, the trained indication is frequently a sit or 09:49:55 a down.

09:49:58 **Q.** What did you do after Hawk gave his first 09:50:02 indication?

09:50:03 **A.** I commanded him to continue searching, and I 09:50:07 directed him around the periphery of that flattened area 09:50:13 into the area where all the debris was mounded up, and as I 09:50:17 walked around the perimeter there with the debris, I had 09:50:21 detail, had him do a detailed search of that debris, and 09:50:25 then as we got around, finished the debris pile, there were 09:50:32 no other alerts or indications, but we moved sort of back 09:50:36 into the dirt area, and when he got to the dirt area he 09:50:39 started sniffing again very intensely in the dirt, dug a 09:50:43 little bit in that flattened depression area, and then he 09:50:49 quickly returned right back to the spot where he indicated 09:50:52 before and he downed again. At that point, I ended the 09:50:57 search, put him on lead, and took him out of the area, and 09:51:01 I called Dana on the radio to tell him that we had 09:51:06 completed our search.

09:51:07 **Q.** So he laid down twice in the same spot?

09:51:12 **A.** Yes.

09:51:14 **Q.** I'm going to hand you what's been marked as
09:51:24 Defendant's Exhibit 68. (Showing to Mr. Oakes). Ms.
09:51:39 Bamford, I'm going to approach and hand you what's been
09:51:41 marked as Defense Exhibit 68 and ask if you can identify
09:51:45 what that document is.

09:51:46 **A.** This is the K-9 search report that I wrote up after
09:51:52 that afternoon after I returned home.

09:51:55 **Q.** And what does it consist of?

09:51:57 **A.** It's my brief narrative and then there's a
09:52:02 topographic map that I generated using computer software
09:52:07 program that we frequently use on searches. The -- so this
09:52:14 is in black and white, but the little box I drew in that
09:52:19 was a rough estimate of the area we searched, and then
09:52:23 those three stars are the downloaded way points for his two
09:52:31 alerts and the one indication.

09:52:35 MS. PEEBLES: Your Honor, at this time I'd
09:52:36 like to offer in Defendant's Exhibit 68.

09:52:41 THE COURT: Any objection?

09:52:43 MR. OAKES: If I may have a moment, Your
09:52:45 Honor.

09:52:45 THE COURT: Sure.

(Whereupon, there was a pause in the
09:52:58 proceeding).

09:52:58 MR. OAKES: No objection, Your Honor.

09:53:00 THE COURT: Sixty-eight's in.

(Defendant's Exhibit No. 68 was received in
09:53:01 evidence).

09:53:01 **Q.** Now I cut you off, I apologize. Now what were you
09:53:04 saying?

09:53:04 **A.** The last page are after the search, I took some
09:53:09 photos just to have a better orientation since the area is
09:53:16 just all dirt and woods and it can often all start looking
09:53:19 the same, a picture can help, showing the tree where he
09:53:24 alerted, the -- and the far end where he indicated.

09:53:30 **Q.** Now, and you also made the hand map of the search,
09:53:37 and that's the second page of that document?

09:53:41 **A.** Well, this is a computer generated map.

09:53:44 **Q.** That you actually entered in the information and
09:53:46 that's what was produced?

09:53:47 **A.** Yes.

09:53:48 **Q.** Were actual physical remains located in the area
09:53:53 searched by Hawk?

09:53:55 **A.** Nothing was visible to me.

09:53:56 **Q.** Can you explain human decomposition odor?

09:54:00 **A.** When a body begins to decompose after death, all the
09:54:08 tissue breaks down into chemical components. Many of these
09:54:12 chemical components evaporate or easily vaporized at normal
09:54:18 temperature and pressure and they're called volatile
09:54:22 organic compounds or VOCs. The tissue as it's breaking
09:54:26 down is off gassing these VOCs, and the chemicals are also

09:54:30 in the decomposition fluid which is then leaching into the site wherever the body's decomposing. These decomposition VOCs create the odor profile that the dog's nose and olfactory system are trained to detect.

09:54:50 **Q.** Now, if a body is charred or burned, would that be something that Hawk would indicate on if he were searching as a cadaver dog?

09:55:00 **A.** Yes.

09:55:01 **Q.** Will Hawk indicate for the presence of animal remains or decomposition?

09:55:08 **A.** No. They're -- dogs are proved off of animal remains in training.

09:55:13 **Q.** And what do you mean proved off? How do they do that?

09:55:16 **A.** Well, we put out distractor animals, dead animals, or there -- when we are doing natural training, if you go in the woods, you always find old deer bones or maybe a dead possum or a dead raccoon, and in the early stages of imprinting on the odor, young dogs, when they go over to smell that, are told leave it, no, so they never get rewarded for that so they learn that that's a no, and this is such an important issue that even in the certification process, it's required that animal remains be put out as distractor items because the dogs are not permitted to ever alert on animal remains.

09:56:00 **Q.** Have you witnessed Hawk ever indicate on animal remains?

09:56:04 **A.** In his early -- well, he never indicated, he always showed interest because dogs do that when they're very young, it's part of the training process, they go over and they smell something, but he has never given an indication on animal remains.

09:56:19 **Q.** Now, after Hawk searched the area, did Mr. Malabar conduct a search in that area?

09:56:26 **A.** Yes, he did.

09:56:27 **Q.** Did you witness that search?

09:56:29 **A.** Yes. I was about fifty to sixty feet up the hill and so I could look down and observe what he was doing.

09:56:38 **Q.** Tell the Court what you saw him do.

09:56:42 **A.** Dana performed the search pattern about the same way I did 'cause the wind was still coming out of the north, so he started at the southeast corner and started working Libby from the south toward the north, and Libby ranged out and immediately was attracted to the -- that dirt depression that was sort of in the center of the area, and she started sniffing there very intensely at the same area that Hawk had been interested in, but she actually downed on that site, and then she moved up toward the area where Hawk had indicated, and about three feet away from it, she downed again, and then she continued the search and she

09:57:35 worked her way around that little mound, and at that mound, at the exact same location that Hawk had downed, she downed again. Then Dana did the same thing, he took her around the perimeter of the area, and he had her detail the debris pile, and I didn't observe any alerts or indications there and then he completed his search.
09:57:41
09:57:45
09:57:48
09:57:52
09:57:59

09:58:03 **Q.** Now, you said that Libby has the same training that Hawk has.
09:58:08

09:58:08 **A.** Yes.

09:58:09 **Q.** What was the GPS location where both Hawk and Libby indicated for the presence of human remains?
09:58:17

09:58:19 **A.** On my report it is under evidence found, it's number three. It says K-9 indication, and those coordinates are UTM coordinates using the datum WGS eighty-four, and I believe on Dana's report he also it's number three.
09:58:25
09:58:32
09:58:40

09:58:48 **Q.** Now, are you familiar with the search that was conducted by the Oswego County SAR Team and the Oswego County Sheriff's Department?
09:58:50
09:58:54

09:58:56 **A.** The grid search that was conducted I think some time in August?
09:58:59

09:59:00 **Q.** Yes.

09:59:01 **A.** Yes.

09:59:02 **Q.** Did you review any reports in connection with that search?
09:59:04

09:59:04 **A.** Yeah. I saw the -- the areas that were searched, 09:59:09 and I saw the sign-in sheets and the communication log.

09:59:15 **Q.** And about that search, what if anything did you notice in connection with what they actually did?

09:59:25 MR. OAKES: Objection, Your Honor.

09:59:27 THE COURT: Based on what?

09:59:28 MR. OAKES: Based on hearsay, and she's reviewing documents she has no personal foundation or knowledge of what took place.

09:59:34 THE COURT: Sustained.

09:59:36 **Q.** Well, you're an experienced -- you have been involved in many searches as you previously testified, right, Ms. Bamford?

09:59:41 **A.** Yes.

09:59:42 **Q.** So you're familiar with what a grid search is.

09:59:44 **A.** Yes.

09:59:44 **Q.** And when you were reviewing the documents that I sent to you, did you determine whether or not they conducted a grid search?

09:59:53 MR. OAKES: Objection, Your Honor, again, based on hearsay.

09:59:55 THE COURT: I'm going to sustain.

09:59:56 **Q.** Okay, what are grid searches used for?

09:59:59 **A.** Grid searches are used for looking for a person who might be down, like collapsed, a person who is -- so you're going to need to find them, you're going to need to walk up

10:00:21 on them, and in a case where it's a twenty year old cold
10:00:27 case --

10:00:29 MR. OAKES: Objection, Your Honor,
10:00:30 non-responsive.

10:00:32 MS. PEEBLES: I asked her when you would use a
10:00:34 grid search.

10:00:34 THE COURT: No, you asked her what a grid
10:00:36 search is.

10:00:38 **Q.** And when would you use a grid search?

10:00:40 **A.** You would use a grid search for again, for a live
10:00:44 person that you're looking for who might be down, and you
10:00:46 would also use it in a criminal case where you're looking
10:00:51 for evidence, and there's going to be evidence visible, so
10:00:55 you might be, you know, might be told to look for a cell
10:00:59 phone or a purse or hat or gloves. There's always evidence
10:01:07 out there, but you're not going to be looking for
10:01:14 disarticulated remains that have been out there for twenty
10:01:17 years.

10:01:17 **Q.** Thank you, Ms. Bamford.

10:01:20 MS. PEEBLES: No further questions.

10:01:26 THE COURT: Give me a second please, Mr.
10:01:29 Oakes.

10:01:29 MR. OAKES: Certainly, Your Honor.

10:01:32 (Whereupon, there was a pause in the
10:01:37 proceeding.)

10:01:37 THE COURT: Ms. Peebles, could he have your
10:01:40 microphone please?

10:01:42 MS. PEEBLES: Sure.

10:01:55 THE COURT: Go ahead, Mr. Oakes, when you're
10:01:57 ready, sir.

10:01:58 MR. OAKES: Thank you, Your Honor.

10:01:59 CROSS-EXAMINATION

10:02:00 BY MR. OAKES:

10:02:01 **Q.** Good morning, Ms. Bamford.

10:02:16 **A.** Good morning.

10:02:17 **Q.** My name is Greg Oakes, the district attorney. I'm
10:02:21 going to ask you some questions. If you don't understand
10:02:24 the question that I ask you or if you are confused, just
10:02:27 ask me to rephrase, okay?

10:02:28 **A.** Yes.

10:02:29 **Q.** Okay, Ms. Bamford, you testified initially about
10:02:32 your training and education as a psychologist?

10:02:35 **A.** Um hum.

10:02:35 **Q.** You're not testifying here as a psychologist this
10:02:38 morning though, correct?

10:02:39 **A.** That's correct.

10:02:39 **Q.** And you told Ms. Peebles you went to a location on
10:02:45 Rice Road?

10:02:46 **A.** Yes.

10:02:47 **Q.** In the Town of Mexico?

10:02:48 **A.** Yes.

10:02:48 **Q.** Had you ever been to that location before, ma'am?

10:02:51 **A.** No.

10:02:51 **Q.** Had you read about it in the news or heard about it in the news?

10:02:55 **A.** I had seen, yes, that there had been a search in sometime during the summer.

10:03:02 **Q.** And you went to a particular spot in those woods?

10:03:10 **A.** Yes.

10:03:11 **Q.** Is that correct? Now, had Ms. Peebles advised you of the particular spot or the type of spot prior to you going there for the search?

10:03:19 **A.** Yes. She told me it was going to be a small area where there had been a collapsed structure of some sort.

10:03:27 **Q.** Had you seen any photographs of that structure, of that area prior to going there?

10:03:32 **A.** Yes, I had.

10:03:33 **Q.** Okay, and who provided those photographs to you?

10:03:36 **A.** Ms. Peebles.

10:03:37 **Q.** And the area that you were asked to search then, approximately how big is it say in square feet?

10:03:47 **A.** Well, it's about a quarter of an acre. It's like the size of a small backyard.

10:03:55 **Q.** And how did you arrive at that location, ma'am?

10:03:59 **A.** We parked at a different location off of Rice Road

10:04:04 where we could park the vehicles, and then we had to hike
10:04:08 in a little distance to it.

10:04:09 **Q.** Okay. Now, did you enter the wooded area from the
10:04:13 road itself or did you park say at a neighbor's property
10:04:16 and walk in?

10:04:16 **A.** No, we were on the road.

10:04:19 **Q.** Okay, and so when you walked in from the road, how
10:04:22 easy or how difficult was it to get to the site?

10:04:25 **A.** Well, we were parked at a location that was west of
10:04:31 the site, so we didn't go like directly south from the
10:04:36 cars, so the cars weren't parked directly north of the
10:04:40 site. We were off to the west, so we entered the woods a
10:04:44 little bit and then headed east, and then we followed the
10:04:48 stream there. The stream kind of runs east/west, and so we
10:04:53 followed the stream until we came to the site. We had to
10:04:57 cross the stream, and then we arrived at that location.

10:05:00 **Q.** Now, how did you know to go to that particular spot
10:05:05 in the woods?

10:05:05 **A.** Ms. Peebles directed us there.

10:05:08 **Q.** Okay, so rather than saying being at the roadside
10:05:14 and just letting Hawk loose to go into the woods, you were
10:05:17 basically led to a very specific site by Ms. Peebles.

10:05:21 **A.** Yes. The whole -- the whole search scenario was
10:05:26 going to be just that site.

10:05:27 MR. OAKES: Okay. Now, Your Honor, can I have

10:05:30 Exhibit 35 please which has been admitted? Thank you.

10:06:02 **Q.** Now, the wooded area that you were looking at was on the south side of Rice Road?

10:06:08 **A.** Yes.

10:06:08 **Q.** Did you notice whether there were any structures on the north side of Rice Road?

10:06:12 **A.** No, I didn't go over there at all.

10:06:15 **Q.** Okay, so you don't know if there were any structures of any type across from the location on Rice Road?

10:06:22 **A.** I have no firsthand knowledge.

10:06:25 **Q.** Okay. Now, as you entered the woods from the roadway, would you say that the trees were thick?

10:06:34 **A.** I would say that it was a not very thick forest, there were a lot of trees, but the understory is not very thick at all except right when you get around the creek which is common where there's a lot of water and sunshine, you get some brambling brushes.

10:06:53 **Q.** Now, would you agree with the statement then that the woods were, you know, thick, and that it was hard to get through there so that most people would have turned around?

10:07:01 **A.** No, I would not.

10:07:08 **Q.** Now how long did it take you to get to that spot in the woods? You said it was about four-hundred feet?

10:07:13 **A.** If you took a direct line from that site due north

10:07:20 to the road, it was four-hundred feet, but since we were
10:07:24 parked quite a bit west, it took us, you know, twice that.
10:07:31 Like we probably walked eight-hundred feet.

10:07:33 **Q.** Okay, so approximately how long did that take you
10:07:37 ballpark?

10:07:39 **A.** Less than ten minutes.

10:07:43 **Q.** Now, at any point during that -- now, as you were
10:07:51 walking, at any point did you cross any railroad tracks?

10:07:55 **A.** No.

10:07:55 **Q.** Did you get another spot of thick brush at any point
10:08:02 while you were walking?

10:08:03 **A.** No.

10:08:03 **Q.** And did you get to an area where it opened up at the
10:08:08 center of the woods and there's basically a small field
10:08:12 there?

10:08:13 **A.** No.

10:08:14 **Q.** Okay, so this structure that you're talking about is
10:08:16 not in an open field across from the railroad tracks from
10:08:20 where you entered?

10:08:21 **A.** No.

10:08:21 **Q.** Now, before your dog begins the search of the area,
10:08:32 do you ever check it for safety to make sure there's no
10:08:36 hazards to your dog to get hurt?

10:08:38 **A.** Yes. That's what I stated I did as my first
10:08:42 priority.

10:08:42 **Q.** Okay, because you're concerned there might be nails or shards of glass or something that might cut the dog's paws?

10:08:49 **A.** For safety of the scene is for both the dog and the people involved.

10:08:54 **Q.** So did you take note of the objects that were around that -- well, let me rephrase. You said it looked like there was a structure there at one time?

10:09:02 **A.** Right.

10:09:03 **Q.** And but it looks like it had been kind of fallen down or torn down and kind of spread about?

10:09:09 **A.** Yes.

10:09:10 **Q.** Did you notice any wood stove or fireplace at the scene?

10:09:16 **A.** I don't recall.

10:09:18 **Q.** Now, Ms. Bamford, you said that dogs detect certain chemicals that are created by flesh when it decomposes?

10:09:52 **A.** Yes.

10:09:52 **Q.** Do you recall what the exact chemicals are?

10:09:56 **A.** There is a -- okay, so the study of human decomposition and the chemicals, there is probably over a hundred chemicals. The research that has been done by analytical chemist at Oak Ridge National Laboratories has shown that there are about -- there are thirty that are the most prominent and the most consistent. Of those thirty

10:10:29 chemicals, I can't name them all.

10:10:35 **Q.** That's okay, ma'am. That's okay. What I was going
10:10:40 to ask you is when the dogs go through their training to
10:10:44 detect on human cadavers, sometimes through that training,
10:10:50 trainers will use bones from humans, see if a dog will
10:10:55 detect on that, is that something they will use sometimes?

10:10:57 **A.** Yes. Sometimes we use dry bones.

10:10:59 **Q.** Okay.

10:10:59 **A.** There's two types of bones, a wet bone, that would
10:11:03 be not fully decomposed, and then totally skeletonized dry
10:11:08 bones, and those have very different odor compositions.

10:11:13 **Q.** And my understanding -- well, let me ask you, for
10:11:20 your organization, do you have a certificate to use actual
10:11:24 human remains as part of your training?

10:11:26 **A.** I use legally obtained remains which include there
10:11:31 are places where you can buy very old skeletonized bones
10:11:35 like the skeletons that have been discarded from old
10:11:39 medical schools, they break those up. We can also possess
10:11:45 blood, fluids from -- from wounds. We can also possess
10:11:53 pieces of placenta, and so those are the types of tissues
10:11:59 that we can use.

10:12:01 **Q.** Well, when you talk about blood or fluids from
10:12:05 wounds, would a dog detect on blood that was in the woods,
10:12:10 human blood that had been there decomposing?

10:12:13 **A.** If it was a large enough amount, yes.

10:12:16 **Q.** So hypothetically, if somebody had cut themselves or had an injury and stopped at that area and rested, and they bled into the soil, and then continued walking, the dog might detect on that blood because it's there and decomposing?

10:12:35 **A.** Yes, but over a period of time it will, you know, degrade to a point where it will be a smaller and smaller trace amount so that it would have to have been something that was relatively recent.

10:12:49 **Q.** Okay, but I guess my larger point is when we talk about cadaver recovery or cadaver location, we often think about bodies or parts of bodies being found, but it doesn't necessarily mean that it could be fluids from a person, correct?

10:13:07 **A.** It could be decomposition fluids.

10:13:10 **Q.** Okay.

10:13:10 **A.** Not -- like often people say like urine, urine's a fluid.

10:13:15 **Q.** Right.

10:13:16 **A.** But there is no tissue in urine.

10:13:19 **Q.** But again, to my hypothetical, if somebody were injured and bled in that area, the dog would detect it at some point and think of it as decomposing fluids, decomposing blood, and therefore, in the dog's terms, quote, a cadaver?

10:13:35 **A.** Yes. Blood is a tissue so it can decompose.

10:13:38 **Q.** And when you talk about blood degrading, does the
10:13:43 blood have to degrade to a certain level for Hawk to detect
10:13:46 on it?

10:13:46 **A.** So dogs are trained -- so it's a target odor is what
10:13:53 the dog is trained on, so if you train a dog always on
10:13:58 fresh blood, then that will be what the dog detects. If
10:14:02 you train a dog on decomposing blood, meaning what's called
10:14:07 aged blood, they will detect on that. We tend to detect on
10:14:11 aged blood as opposed to fresh blood, but some dogs are
10:14:18 trained like Maine -- well, the warden services or the
10:14:24 rangers in a number of states who are enforcing
10:14:28 conservation law are often looking for wounded animals, and
10:14:32 they have dogs that are trained to find those wounded
10:14:35 animals, and they are following a fresh blood trail, so
10:14:40 those dogs are trained on fresh blood, but we -- we train
10:14:45 on aging human blood.

10:14:49 **Q.** What age?

10:14:51 **A.** It could vary because we need to give the dog a
10:14:55 lexicon of odors, so it can be like a few days old, a few
10:15:02 weeks old, a few months old.

10:15:04 **Q.** So let's say -- again, what was the date that you
10:15:08 went out to the site?

10:15:08 **A.** It was October twenty-third.

10:15:12 **Q.** Okay, say for hypothetical somebody was out there in

10:15:18 middle to late July of that same year, a few months before,
10:15:21 and they were messing around and pulling -- pulling stuff
10:15:25 out of there and cut themselves and bled, is that something
10:15:29 your dog might detect then a few months later?

10:15:31 **A.** Not likely because if they cut their finger, the
10:15:35 amount of blood, unless they died from that, exsanguinated
10:15:40 at that site, that tiny amount of blood will -- will
10:15:43 disintegrate to a level where it's not detectible.

10:15:47 **Q.** Well, and let's talk about that disintegration and
10:15:51 degrading. You said over the period of time the odor fades
10:15:55 from decomposition?

10:15:58 **A.** Yes. Well, the -- it depends on what chemicals are
10:16:02 there. So you're talking about a single tissue of blood,
10:16:05 that's just a single cell type, but when a body decomposes,
10:16:09 it's many tissues and many cell types and many chemicals,
10:16:14 so there's a huge difference between a drop of blood and
10:16:19 all the tissue of the body decomposing.

10:16:24 **Q.** So just so I get this clear in my head then, so at a
10:16:36 certain -- your ability to detect or the dog's ability to
10:16:40 detect an odor is going to depend in part on how much fluid
10:16:46 or initial material was there initially?

10:16:48 **A.** Yes.

10:16:50 **Q.** And if it's a small amount, they might be able to
10:16:54 detect it for X amount of time, but if it's a large amount,
10:16:59 they might be able to detect it X plus five, does that make

10:17:05 sense?

10:17:06 **A.** Roughly.

10:17:06 **Q.** Okay, so essentially the more fluid, the more
10:17:11 material, the later the dog would be able to detect it in
10:17:14 time, is that fair?

10:17:15 **A.** Yes, and they've shown it in research studies that a
10:17:20 decomposing body leaves a chemical -- chemical profile for
10:17:28 a dog that a dog is able to detect decades after the body
10:17:32 is decomposed because the chemicals get bound up in the
10:17:36 soil.

10:17:37 **Q.** Okay, so when you say decades, twenty years?

10:17:41 **A.** More than twenty years.

10:17:42 **Q.** Thirty years?

10:17:43 **A.** They -- more than -- they can detect -- they've
10:17:46 detected seventy, eighty, hundred year old grave sites.

10:17:49 **Q.** Okay, so if somebody had died on that site eighty
10:17:54 years ago, somebody was hunting in the woods and got shot,
10:17:59 died on that spot, your dog might have detected that hunter
10:18:04 from eighty years ago?

10:18:05 **A.** It could have.

10:18:07 **Q.** Your dog, when it detects -- well, to Ms. Peebles'
10:18:18 question, you didn't find any actual remains there did you?

10:18:21 **A.** No. I could not visualize anything.

10:18:24 **Q.** Okay.

10:18:25 **A.** But I didn't try to visualize anything. I didn't

10:18:28 disturb the site.

10:18:29 **Q.** Okay, and actually I believe you had testified that
10:18:34 site looked like it had been dug through with a machine?

10:18:37 **A.** Yeah. It looked flattened.

10:18:40 **Q.** It looked like somebody had been digging in that
10:18:48 area within the past couple months, few months?

10:18:51 **A.** Yes, 'cause there was -- it was clearly different
10:18:53 from the surrounding areas. There was no vegetation, it
10:18:57 was smooth, and there was little dirt mounds at the edges
10:18:59 of it.

10:19:01 **Q.** Okay, and let me ask you if somebody again had died
10:19:09 there eighty years ago from a shotgun wound and somebody
10:19:14 came in and dug up that dirt and disturbed it, would that
10:19:18 move that odor to various locations within that area?

10:19:22 **A.** Yes.

10:19:24 **Q.** And so that dogs might actually indicate on a few
10:19:28 different areas because that dirt's been essentially spread
10:19:31 around?

10:19:33 **A.** Yes.

10:19:33 **Q.** Okay, and you had indicated that -- I just want to
10:19:40 be clear. You said that Hawk initially alerted on a spot,
10:19:46 your dog Hawk had alerted on a spot, but then downed and
10:19:51 indicated on another spot, is that correct?

10:19:52 **A.** Yes.

10:19:53 **Q.** But then you watched Libby go to that spot where

10:19:56 Hawk first showed interest and actually indicated that spot.

10:20:00 **A.** Yes.

10:20:01 **Q.** So the two dogs disagreed?

10:20:02 **A.** No. What it is is there's, you know, small differences, they're different animals, just like humans are different humans, dogs are different dogs, and they have, you know, small changes, they're small differences in the threshold of detection.

10:20:18 **Q.** But my question is Hawk went to spot X, sniffed it, said there's nothing here and moved on?

10:20:26 **A.** No. His alert says there is something here, I'm not a hundred percent sure, it's crossed my threshold of recognition.

10:20:36 **Q.** Okay.

10:20:36 **A.** And that's why a handler needs to look for alerts and indications.

10:20:42 **Q.** Okay, but the alert is essentially showing interest. The indication is basically the doggy way of saying hey, I found something.

10:20:51 **A.** It's the dog's way of -- it's the way the handler knows that a threshold of recognition has been crossed in the dog's brain and the dog is saying "here."

10:21:02 **Q.** Okay.

10:21:04 **A.** If they could verbalize it, they'd be going I smell

10:21:07 it a little bit here, I smell it a little bit more here, I
10:21:11 smell it a little bit more here, and oh, this looks like
10:21:13 it's the strongest, so I'm going to down.

10:21:20 **Q.** But the indication is supposed to take it to the
10:21:23 strongest source, correct?

10:21:24 **A.** Yes, but that can again, that will vary, and also we
10:21:27 conducted the search at a different time, so a period of
10:21:31 time had -- had gone by, and at that -- and with that, the
10:21:36 temperature was warming up, the winds can change a little
10:21:40 bit, so the air current that are carrying the scent can
10:21:45 vary over a period of fifteen minutes so that one minute
10:21:48 the scent is here and, you know, twenty minutes later the
10:21:53 scent might be like more concentrated two feet away, so
10:21:58 there are other variables here, but, you know, from my
10:22:02 perspective, the dogs' behaviors were totally consistent.

10:22:07 **Q.** Okay, Ms. Bamford, my question is your dog Hawk went
10:22:15 to spot X and did not indicate, correct?

10:22:17 **A.** Yes.

10:22:18 **Q.** And Libby went to spot X and indicated.

10:22:22 **A.** Yes. So she got -- so it detected -- it went over
10:22:25 the threshold of her detection and she said I think it's
10:22:30 here.

10:22:31 **Q.** Now, again, using this spot X, does that mean
10:22:37 because the dog detects the odor at spot X, does that mean
10:22:41 that's where the death occurred or the decomposition

10:22:44 occurred?

10:22:44 **A.** Not necessarily, especially at that location where 10:22:47 the soil had been moved clearly, been pushed around, so if 10:22:54 soil under a body has been disturbed and flung in different 10:22:58 areas, then it may appear, you know, in areas where the 10:23:02 soil lands.

10:23:04 **Q.** That decomposition odor, can that be -- you said 10:23:17 about being carried from wind, can a dog --

10:23:22 MR. OAKES: Actually excuse me one moment.

10:24:06 (Whereupon, there was a pause in the 10:24:07 proceeding.)

10:24:07 **Q.** When we talk about a body decaying over time, you 10:24:12 said the odor will degrade, the odor will be essentially 10:24:16 less strong the more time passes, is that fair to say?

10:24:21 **A.** It depends. There are too many variables there to 10:24:28 make a generalized statement.

10:24:31 **Q.** And you said wind direction does play a role in 10:24:38 where the dog detects or picks up the odor?

10:24:41 **A.** Yes.

10:24:41 **Q.** And I think you said that Hawk initially kind of 10:24:45 went to a tree and kind of went up the tree and sniffed the 10:24:49 air to pick up the odor initially?

10:24:51 **A.** Right.

10:24:51 **Q.** Have there been cases where dogs had essentially 10:24:54 alerted on an area and the body might be a couple hundred

10:24:58 yards downstream or upwind but the dog's picking up the
10:25:04 odor at that particular spot?
10:25:05 **A.** Yes.
10:25:06 **Q.** So using my hypothetical, if a body died thirty
10:25:14 years ago three-hundred yards upwind, and they're still
10:25:18 that strong odor there, Hawk could have actually
10:25:21 been detecting that odor and picking it up at the spot you
10:25:24 were looking at potentially?
10:25:26 **A.** Not in -- in that -- well, you have to also then
10:25:30 factor in the terrain like what would be moving the odor,
10:25:34 is the terrain conducive to that kind of scenario, so if
10:25:38 you are looking like along a riverbed or a streambed and
10:25:43 the body is near the streambed and it's upstream, the dogs
10:25:48 could be alerting, you know, fifty, a hundred yards
10:25:51 downstream because the odors are being carried down. In
10:25:56 that particular case, the dogs were so intent on the dirt,
10:26:01 both dogs consistently showed the most interest on the
10:26:05 dirt, pawing at it, snorting at it, so you have to be able
10:26:10 to, you know, take into consideration the other variables.
10:26:16 **Q.** So part of this -- part of I guess the results just
10:26:23 isn't just what the dog does but the handler's
10:26:25 interpretation of the dog's behavior?
10:26:27 **A.** Well, right. Over training, you learn that so we're
10:26:31 in a flatland area in the woods, it's not the same as like
10:26:35 a mountainous region where if you are on the side of a

10:26:41 mountain and the air current are flowing up and the dog
10:26:45 starts alerting on the side of a mountain, the body could
10:26:48 be at the bottom where, you know, and the air current are
10:26:52 bringing it up. This is a flat woodland area, so there
10:26:55 were no terrain features or other environmental factors
10:27:00 that would lead me to believe that scent was being carried
10:27:05 from a distant location.

10:27:08 **Q.** And you're not testifying that the remains -- that
10:27:12 the odor detected was charred human remains, that's not
10:27:15 your testimony.

10:27:15 **A.** I can't say whether it's charred or not. I can just
10:27:20 tell you that the dog will alert on all types of
10:27:23 decomposing remains including charred remains.

10:27:26 **Q.** You're not saying that the remains were chopped up
10:27:30 and buried in that spot necessarily.

10:27:32 **A.** I can't testify other than that there were -- there
10:27:37 was the odor of human remains which means that there were
10:27:41 the chemicals that produce that odor and that it came from
10:27:45 a human body that was decomposed.

10:27:48 **Q.** So essentially you don't know how the remains came
10:27:51 to be there either.

10:27:52 **A.** No, not as a dog handler.

10:27:54 **Q.** And you don't know really at what point in time the
10:27:57 remains were actually there.

10:27:58 **A.** No, I cannot.

10:28:00 **Q.** You can't tell us how long the remains were actually there at that spot.

10:28:04 **A.** No, I cannot.

10:28:08 **Q.** Are you familiar with the background of this case and the purpose of this testimony?

10:28:13 **A.** A little bit.

10:28:14 **Q.** Ms. Bamford, are you telling the Court that Heidi Allen was buried at that spot?

10:28:21 MS. PEEBLES: Objection.

10:28:22 THE COURT: Argumentative. I'll sustain it.

10:28:28 **Q.** Ms. Bamford, you're not offering any testimony as to whether or not the victim in this case was at that particular location are you?

10:28:38 MS. PEEBLES: Same objection. She already said she doesn't know.

10:28:40 THE COURT: Sustained. Asked and answered.

10:28:42 MR. OAKES: Thank you very much, Your Honor. Thank you, Ms. Bamford.

10:28:49 MS. PEEBLES: Ms. Bamford, I just want to --

10:28:51 THE COURT: Give me a second please. I write slower.

10:28:56 (Whereupon, there was a pause in the proceeding.)

10:28:59 THE COURT: Whenever you're ready, Ms. Peebles. Thank you.

REDIRECT EXAMINATION

10:29:08 BY MS. PEEBLES:

10:29:08 **Q.** Ms. Bamford, I just want to clear something up real quick. Where you parked your car, Mr. Oakes was asking you where -- where the cars were parked. We weren't on the tarvia, paved road were we?

10:29:24 **A.** No, we were -- we pulled off on like a little dirt road that -- that ended like it would, you know, pulled off into the woods a tiny bit.

10:29:36 **Q.** Okay, and we were heading west in a westerly direction from that area?

10:29:42 **A.** To -- from the car to the area, we headed east.

10:29:47 **Q.** East, I'm sorry. Okay, so we weren't going in from Rice Road, we were going in from a road off of Rice Road?

10:29:56 **A.** No, we went in from Rice Road.

10:29:57 **Q.** Right, but where we parked on that little roadway, describe the area I guess is the best way I can say it.

10:30:05 **A.** Well, is it Route 11 that goes north/south? I think it's Route 11.

10:30:11 MR. OAKES: Your Honor, the People would stipulate that Route 11 runs north to south.

10:30:16 **A.** And then Rice Road turns off of Route 11, right? Is that correct?

10:30:23 MR. OAKES: May I, Your Honor?

10:30:23 THE COURT: Sure.

10:30:24 MR. OAKES: If you go up Route 11, go north, basically cross an intersection, four-way intersection, Rice Road is your next right, turn right on that, then you're heading east on Rice Road.

10:30:34 THE WITNESS: Right, and that's what we did.

10:30:36 **Q.** And then when we're on -- when you're on Rice Road, explain where you parked your car. I guess that's the --

10:30:41 **A.** We turned off onto a little clearing area that was a dirt road, it wasn't a road, and it was still west of the area that we eventually searched.

10:30:53 **Q.** Right, okay. Now Mr. Oakes was asking you some questions about the chemical compounds that may be -- may make up the odor that the dogs are alerting on. Do you remember when he was asking you those questions?

10:31:06 **A.** Yes.

10:31:06 **Q.** And you suggested that there are thirty or so chemicals that would be present if a human decomposition had occurred.

10:31:13 **A.** Yes.

10:31:14 **Q.** And do you have any firsthand knowledge whether the soil was tested in this case?

10:31:18 **A.** Yes, it was.

10:31:19 **Q.** And do you have any knowledge about what the results were?

10:31:23 **A.** Yes. A number of samples --

10:31:25 MR. OAKES: Objection, Your Honor. Beyond the
10:31:26 scope of cross. There's no --
10:31:29 THE COURT: Sustained.
10:31:29 MR. OAKES: -- no testimony regarding testing
10:31:32 the soil.
10:31:33 THE COURT: Sustained. No, you opened up the
10:31:35 question to the actual number of chemicals. I think
10:31:37 it's within that -- that frame. However, the question
10:31:40 is foundation.
10:31:42 MS. PEEBLES: Yes, okay.
10:31:43 **Q.** So you -- you're familiar with the results. Do you
10:31:46 know who tested the soil?
10:31:47 **A.** Dr. Arpad Vass.
10:31:50 **Q.** And who is Dr. Arpad Vass?
10:31:53 **A.** He is an analytical chemist at the Oak Ridge
10:31:57 National Laboratory, and he is also an adjunct at the
10:32:01 University of Tennessee's forensic anthropology program and
10:32:03 he's probably the foremost expert --
10:32:05 MR. OAKES: Objection, Your Honor.
10:32:08 THE COURT: Well, she hasn't answered the
10:32:10 question in terms of what exactly the soil results
10:32:12 were, she is simply at this point qualifying the
10:32:15 individual who tested them. It's probably going to be
10:32:17 hearsay objection, but at this point I'll allow her to
10:32:20 continue.

10:32:20 MR. OAKES: Okay, thank you.

10:32:21 **A.** So he's one of the foremost experts in analysis of
10:32:26 odor from decomposition of humans because he has been
10:32:31 trying to develop a machine that will detect the odors in a
10:32:38 way that the dog detects the odors.

10:32:40 MR. OAKES: Objection, Your Honor. Part of my
10:32:42 objection is her description of this doctor as one of
10:32:48 the foremost experts. We have no foundation as to his
10:32:51 qualifications, who he is or what he's done in this
10:32:53 case.

10:32:53 THE COURT: Either is a weight issue.
10:32:55 Ultimately it's going to be does she know the results,
10:32:57 and that's probably going to be where you're going to
10:32:59 stand up and say hearsay.

10:33:01 MR. OAKES: Okay, thank you.

10:33:01 **Q.** And do you know whether or not Dr. Arpad Vass was
10:33:07 provided with soil samples from the area in which Hawk
10:33:10 searched?

10:33:10 **A.** Yes.

10:33:11 **Q.** And did you have an opportunity to review the
10:33:13 results?

10:33:14 **A.** Well, I saw, yes, a brief communication in which he
10:33:18 was able to detect --

10:33:19 MR. OAKES: Objection, hearsay.

10:33:21 THE COURT: Sustained.

10:33:25 MS. PEEBLES: Nothing further.

10:33:26 THE COURT: Mr. Oakes?

10:33:35 RECROSS-EXAMINATION

10:33:36 BY MR. OAKES:

10:33:36 **Q.** Ms. Bamford -- Ms. Bamford, can you hear me okay?

10:33:43 **A.** Yes.

10:33:44 THE COURT: You're live.

10:33:45 **Q.** So you went up Route 11, you turned right on Rice Road, and you guys drove down a ways, you said the dirt road or the dirt road Ms. Peebles was talking about was essentially like a logging trail?

10:34:00 **A.** Looked like an old logging trail because we couldn't drive but a few feet in and then it was woods.

10:34:05 **Q.** Okay, but was there a gate there or was it just open?

10:34:08 **A.** There was no gate. There was no structure. There was nothing.

10:34:11 **Q.** Okay, and as you walk up from the roadway up that logging trail, was there a little knoll, a little hill, little hill?

10:34:20 **A.** I didn't go there.

10:34:22 **Q.** Okay.

10:34:22 **A.** But the location is actually absolutely mapped with a GPS on that map, and so if you took those coordinates which are universal coordinates, and you put it in, you

10:34:36 will get to the exact place where we were.

10:34:38 **Q.** Okay, and I understand that, Ms. Bamford, I'm just
10:34:41 wondering how you got to that location. How far up that
10:34:44 little logging trail did you go?

10:34:46 **A.** We just parked the cars, you could -- from the
10:34:50 parked car, I could turn around and the blacktop road was
10:34:56 right there.

10:34:56 **Q.** Okay. Now, when you took Hawk to the site that you
10:35:01 mentioned this GPS, well, at what point did you give Hawk
10:35:06 the signal to start sniffing?

10:35:09 **A.** Not until we got to the absolute site that I
10:35:13 described which was only like a tiny little area around
10:35:17 that decomposed trash area or decomposed scattered dirt,
10:35:26 dug up area with the debris.

10:35:29 **Q.** Okay. Now, given the dog's sensitivity, has the dog
10:35:34 ever started tracking or alerting to smells even though it
10:35:38 hasn't been given the alert signal or the --

10:35:40 **A.** They can move their head around, but at that point
10:35:43 he was on lead.

10:35:45 **Q.** Okay, did he -- when you first got out of the
10:35:48 vehicle, did he pick up any scent or show any interest in
10:35:51 that area?

10:35:52 **A.** No, but he wouldn't have because I didn't have him
10:35:55 on command, and dogs are very contact specific, so it's
10:35:59 common for me to take him out of the car, put him on lead

10:36:03 and allow him to relieve himself by walking up to a couple
10:36:06 of trees and so he's not working.

10:36:09 **Q.** Okay. Just to clarify, you talked about the GPS
10:36:31 coordinates, so how far did you walk from the logging road
10:36:34 to the site?

10:36:36 **A.** About eight-hundred feet.

10:36:38 **Q.** Okay, okay. Thank you very much, Ms. Bamford.

10:36:44 MS. PEEBLES: No further questions. Thank
10:36:45 you.

10:36:45 THE COURT: Thank you. You can step down.
10:36:56 Your client's here?

10:37:01 MR. WEGERSKI: Yes, Judge.

10:37:02 THE COURT: We'll reconvene at quarter to
10:37:06 eleven.

10:37:07 (Whereupon, there was a recess.)

10:59:20 THE COURT: Ready, folks?

10:59:22 MS. PEEBLES: Yes.

10:59:23 THE COURT: Okay, would you bring in -- do you
10:59:26 want Mr. Bohrer brought in?

10:59:28 MS. PEEBLES: Yes, please.

10:59:30 THE COURT: Bring Mr. Bohrer in. Before the
10:59:31 witness starts testifying, the Court will place on the
10:59:33 record that the Court has assigned an attorney to
10:59:35 represent Ms. Wescott at her request and that
10:59:38 attorney's being provided the necessary information to

10:59:40 bring him up to speed in terms of his client as well as
10:59:46 contact information with Ms. Wescott, and there's no
10:59:51 objection to the assignment, correct?

10:59:52 MS. PEEBLES: Correct.

10:59:54 MR. OAKES: Correct.

10:59:55 THE COURT: Thank you. Sir, have a seat.
11:00:06 Actually stand up. You need to be sworn.

11:00:12 THE CLERK: Raise your right hand, place your
11:00:16 left hand on the Bible.

11:00:17 MICHAEL BOHRER, Called as a witness, having
11:00:22 been duly sworn, was examined and testified as follows:

11:00:22 THE CLERK: Please state and spell your first
11:00:24 and last name for the record.

11:00:25 THE WITNESS: State and spell you said?

11:00:27 THE CLERK: Yes.

11:00:27 THE WITNESS: Michael Bohrer, B-O-H-R-E-R.

11:00:32 THE CLERK: Please be seated.

11:00:34 THE COURT: Mr. Bohrer, as I asked you
11:00:36 yesterday, I'm going to ask you again today, do you
11:00:38 consent to having your testimony video taped and audio
11:00:41 taped?

11:00:41 THE WITNESS: No.

11:00:43 THE COURT: Okay, thank you. Ms. Peebles,
11:00:46 continue your direct.

11:00:46 MS. PEEBLES: Yes.

CONTINUED DIRECT EXAMINATION

11:00:47 BY MS. PEEBLES:

11:00:47 **Q.** Mr. Bohrer, when we left off yesterday, I was asking if you remember telling Investigator Pietroski and Investigator Johnson whether you lived at Spinners, that you lived at Spinners hotel in 1994. Do you remember me asking you that?

11:01:04 **A.** Yes.

11:01:04 **Q.** Okay, and is that true?

11:01:05 **A.** Yes.

11:01:06 **Q.** Now you had a post office box when you were living in that -- at Spinners hotel?

11:01:11 **A.** Yes.

11:01:12 **Q.** And that was at the New Haven Post Office?

11:01:14 **A.** Yes.

11:01:16 **Q.** And you would go there to pick your mail up?

11:01:19 **A.** Yes.

11:01:20 **Q.** Now, after Heidi Allen was missing April third of 1994, you didn't pick your mail up for two weeks?

11:01:31 MR. MOODY: Judge, can -- objection, leading. We're getting back into her leading her own witness.

11:01:36 THE COURT: I'm going to sustain.

11:01:36 **Q.** Do you remember when the -- you picked your mail up after -- how long it was after Heidi Allen was missing till the next time you picked your mail up at the New Haven Post

11:01:47 Office box?

11:01:48 **A.** No.

11:01:51 **Q.** When you were questioned by investigators, did they ask you about where you were during that two-week period between the time Heidi Allen was missing and the time you picked up your mail at the post office box?

11:02:09 **A.** No, I -- I don't remember too much of that time.

11:02:18 **Q.** All right, I'm going to talk to you a little bit more about your interview with Investigator Pietroski and Investigator Johnson on March twenty-first of 2013, okay?

11:02:30 **A.** Okay.

11:02:31 **Q.** At one point you were telling them that you were junking at Murtaugh's scrap yard.

11:02:38 **A.** Yes.

11:02:40 **Q.** Now, did you say you stopped going to Murtaugh's after it became too hot?

11:02:48 **A.** Yes.

11:02:49 **Q.** What did you mean by that?

11:02:52 **A.** Murtaugh, Jr., while I was trying to take the chains off the load, dropped the pay loader on top of the car while I was there and basically said you're not welcome here or something to that effect, and that was the last I junked a vehicle there.

11:03:28 **Q.** Did you tell Investigator Pietroski that you had to get the hell out of there?

11:03:34 **A.** I don't remember.

11:03:36 **Q.** Did you say that there was coke people at Murtaugh's?

11:03:42 MR. MOODY: Objection, Judge. She's leading again.

11:03:45 THE COURT: Sustained. You don't need to answer the question, sir.

11:03:49 **Q.** Let me ask you this, Mr. Bohrer. What type of people were hanging around at Murtaugh's junkyard back when you were scrapping vehicles in 1994?

11:04:02 MR. MOODY: Objection, Judge. What type of people? It's kind of speculative.

11:04:06 THE COURT: Yeah. I don't know if -- that does seem a little speculative, Ms. Peebles. Can you ask maybe more specific?

11:04:12 **Q.** Who was hanging around Murtaugh's junkyard in 1994?

11:04:16 **A.** People junking cars, just hard working, you know, dirty car haulers, you know. I didn't pay much attention to other people. I went in there to drop my load, paid attention to senior because he owned the place. I want to be a, you know, good guy with him, and junior, I didn't like him.

11:04:49 **Q.** Now, did you talk about being afraid of people around the Murtaugh's junkyard?

11:04:56 MR. MOODY: Objection. Can we have a time

11:04:58 frame and --

11:04:58 THE COURT: Time frame and close to leading but I'll allow it. We need a time frame.

11:05:04 **Q.** I'm talking about an interview you had with Investigator Pietroski and Investigator Johnson on March twenty-first of 2013.

11:05:11 **A.** I became afraid of being there, yes.

11:05:15 **Q.** And why was that?

11:05:16 **A.** Because of Rick Murtaugh, Jr. primarily.

11:05:34 **Q.** And -- and why? What made you afraid?

11:05:38 **A.** Well, threatening to drop a pay loader on your head 11:05:43 kind of gave me a signal I should get out.

11:05:47 **Q.** Why would he have -- why would he have threatened 11:05:50 you in that fashion?

11:05:53 **A.** There was an incident where he hired me to take 11:06:00 aluminum to Roth Steel, and I was suspicious of his 11:06:09 authority to do that, was on a Saturday, and he says don't 11:06:15 worry about it, he's my father, blah, blah, blah, blah, 11:06:18 blah, blah, and I says well, if I get in trouble with this 11:06:24 load, I'm ratting you out. Straight up. I says I'm -- I 11:06:34 respect your father, and if you are stealing from him, I 11:06:40 don't want to be a part of it. I think his father was off 11:06:47 Las Vegas or something at the time, he's -- and so I hooked 11:06:55 up to the load of aluminum that he had already arranged, 11:07:01 and on my way out of the yard, apparently his cousin he

11:07:09 said it was showed up, so I looked Murtaugh, I says hey,
11:07:17 you know, you going to get in trouble? He says don't worry
11:07:20 about it, don't worry about it. I said all right. So I
11:07:23 went, took the load to Roth Steel, came back, gave him his
11:07:32 money, and that was that for that day. That was on a
11:07:40 Saturday. The following Monday I come in and have a load,
11:07:49 and Rich Murtaugh, Sr. approached me, big guy, and he says
11:07:58 I want you to lay it out to me straight, and don't you lie
11:08:01 to me, and did my son have you drop off aluminum to Roth
11:08:12 Steel? I looked at him, I says yes, sir. He says okay.
11:08:18 That's all I want to know. You can continue working here,
11:08:23 you know, or using his services. So right then I knew
11:08:29 well, I'm going to have problems with junior, and the
11:08:33 following day I brought a load in and that led to the pay
11:08:39 loader dropping on me.

11:08:40 **Q.** All right, now, during your interview with
11:08:44 Investigator Pietroski and Investigator Johnson, you
11:08:48 mentioned attempts on your life.

11:08:50 **A.** Yes.

11:08:51 **Q.** And you didn't articulate who was attempting to hurt
11:08:55 you, but can you tell us who you were -- you believed would
11:08:59 hurt you?

11:09:00 **A.** That would be speculating.

11:09:05 **Q.** Okay, well, what -- it wouldn't be speculating for
11:09:09 you, I'm asking you who did you think was going to hurt

11:09:12 you?

11:09:13 **A.** Well, that was a good question. There are 11:09:21 approximately four attempts in the twenty years, a couple 11:09:27 of poisonings, but exactly pinpoint like who is giving the 11:09:37 order? I wouldn't want to speculate.

11:09:46 **Q.** I wouldn't want you to speculate. Can you -- were 11:09:49 those --

11:09:50 **A.** I can only describe the events.

11:09:55 MR. MOODY: Objection, Judge. How's this 11:09:57 relevant to anything going on?

11:09:58 THE COURT: Yeah, how's it relevant to the 11:09:59 Heidi Allen issue, Ms. Peebles?

11:10:01 MS. PEEBLES: Well, I'm getting to that.

11:10:03 THE COURT: Quickly I hope?

11:10:04 MS. PEEBLES: Yes, next question.

11:10:06 **Q.** Mr. Bohrer, did those attempts on your life occur 11:10:10 after April third of 1994?

11:10:11 **A.** Yes.

11:10:12 **Q.** Now, why don't you tell us about those events.

11:10:28 MR. MOODY: Objection. Those events?

11:10:31 THE COURT: I'm assuming she's talking about 11:10:32 the alleged attempts on his life.

11:10:34 MS. PEEBLES: Yes.

11:10:35 MR. MOODY: How are they then related?

11:10:36 THE COURT: Again, how are you going to tie

11:10:38 it, the fact that it occurred after April third, 1994,
11:10:41 how does that make it relevant to the Heidi Allen
11:10:44 issue?

11:10:44 MS. PEEBLES: Well, Your Honor, in connection
11:10:46 with the questioning by Investigator Petroski and
11:10:49 Investigator Johnson, Mr. Bohrer was concerned about
11:10:51 threats and was even concerned that he was speaking to
11:10:54 investigators about the case, so I think it's relevant.

11:10:58 THE COURT: These are perceived threats on his
11:11:01 life, right?

11:11:02 MS. PEEBLES: No. He just said there were
11:11:03 four attempts, and I was asking him to explain what
11:11:06 those attempts were.

11:11:06 THE COURT: Seems awfully speculative, a
11:11:08 little outside. I'll allow it on a limited basis. Get
11:11:12 to the point of connection on this issue quickly.

11:11:15 THE WITNESS: Can I consult with my lawyer for
11:11:17 five minutes, Your Honor?

11:11:18 THE COURT: Sure. We'll be back at quarter
11:11:23 after. Five minutes.

11:11:24 (Whereupon, there was a recess.)

11:22:25 THE COURT: Mr. Bohrer, consider that you're
11:22:26 still under oath, okay?

11:22:27 THE WITNESS: Yes, Your Honor.

11:22:28 THE COURT: Thank you. Ms. Peebles, go ahead.

11:22:30 MS. PEEBLES: Can we have the last question read back please?

(Whereupon, the court reporter read back the last question).

11:22:33 THE COURT: I'm going to stop you. Let me ask 11:22:56 to clarify that question because he spoke of an --

11:22:59 MS. PEEBLES: Actually I don't think that was 11:23:01 my last question. I was asking him about who he was 11:23:05 afraid of.

11:23:07 THE COURT: No, I think your last question was 11:23:09 those events because Mr. Moody stood up and said what 11:23:12 events are we talking about. Is that the last 11:23:15 question, right?

11:23:18 MS. PEEBLES: I just had it in my head. 11:23:23 There's no objection to the question?

11:23:25 THE COURT: I'm asking that you -- there was 11:23:25 an objection, what events, and I'm asking to please -- 11:23:29 there's alleged -- allegedly four events.

11:23:32 MS. PEEBLES: Right.

11:23:33 THE COURT: When you say of those events, can 11:23:35 you please ask them individually?

11:23:37 MS. PEEBLES: Yes, but I thought that he asked 11:23:39 to go consult with his lawyer after I asked a question. 11:23:44 There was no objection. That's what I was asking.

11:23:46 THE COURT: Ask the question again.

11:23:50 **Q.** All right, you were talking about these four events?

11:23:52 **A.** Um hum.

11:23:53 **Q.** And can you please tell the Court what happened in
11:23:57 connection with those various events? Start with the first
11:24:02 event.

11:24:02 **A.** I --

11:24:03 MR. MOODY: I still don't see the relevance
11:24:04 here.

11:24:04 THE COURT: I'm questioning the relevance. If
11:24:06 you tie it really quickly I'll allow this line. If you
11:24:09 don't tie it quickly, it's done.

11:24:13 THE WITNESS: I don't want to get into it.

11:24:14 **Q.** Okay, when you were talking with investigator
11:24:17 Pietroski and Investigator Johnson?

11:24:21 **A.** Yes.

11:24:22 **Q.** And they were asking you questions about Heidi Allen
11:24:25 and what you knew?

11:24:26 **A.** Yes.

11:24:26 **Q.** And they were asking you what may have happened to
11:24:29 her, do you remember those questions?

11:24:32 **A.** In general, yes.

11:24:34 **Q.** And do you remember telling them that Heidi Allen
11:24:37 could have wound up at Crosby Hill?

11:24:41 MR. MOODY: Objection, Judge, leading and --

11:24:43 THE COURT: Sustained to leading.

11:24:46 **Q.** Well, can you tell the Court where you told Investigator Pietroski and Investigator Johnson that Heidi Allen could have wound up?

11:24:54 MR. MOODY: Objection. Now it's speculative.

11:24:56 MS. PEEBLES: It's not speculative.

11:24:57 THE COURT: Hold on. Don't yell. Why -- your objection is speculative.

11:25:02 MR. MOODY: Speculative, leading, but speculative because it's his conclusion on some random topic.

11:25:09 THE COURT: Ms. Peebles, address what -- what's the basis?

11:25:12 MS. PEEBLES: I hardly think it's a random topic, he was asked questions during the course of the investigation.

11:25:18 THE COURT: What's the base for his knowledge?

11:25:19 MS. PEEBLES: Well, that's what I'm trying to find out.

11:25:22 THE COURT: Why don't you lay foundation first to see if it's going to be speculative or not.

11:25:26 **Q.** Mr. Bohrer, did you raise the junkyard Crosby Hill when you were questioned by Investigator Pietroski and Investigator Johnson as a place where Heidi Allen could have wound up?

11:25:40 MR. MOODY: Objection. Now it's leading and

11:25:42 speculative.

11:25:43 THE COURT: Now it's leading. Not any
11:25:44 personal knowledge or any basis for his belief. If you
11:25:48 want to ask questions about his basis for his belief,
11:25:50 go there.

11:25:50 **Q.** All right, Mr. Bohrer, why would you have told the
11:25:53 investigators that Heidi Allen could have wound up at
11:25:56 Crosby Hill?

11:25:56 MR. MOODY: Objection, still speculative.

11:25:58 MR. PEEBLES: We don't know. I'm asking him
11:26:00 why he said that.

11:26:02 THE COURT: Can you answer the question, Mr.
11:26:04 Bohrer?

11:26:06 THE WITNESS: I believe so. The why is, you
11:26:12 know, you're talking about a twenty-year investigation,
11:26:16 and at any time your facts may be proven wrong from one
11:26:22 time to another, so of course I had to thoroughly look
11:26:28 into the idea because we've got a van that we are
11:26:32 looking for, so like I said yesterday, I threw it right
11:26:40 out there, you know, I was looking to find out what
11:26:43 happened to Matt Duell's blue van because I saw it
11:26:49 Monday and then I didn't see it on Wednesday after
11:26:54 Heidi disappeared. That was before Bivens, or yeah,
11:26:59 Bivens changed the statement to a white van.

11:27:08 **Q.** Do you have any personal knowledge about that van

11:27:13 being at Crosby Hill?

11:27:16 **A.** The blue van?

11:27:18 **Q.** Yes.

11:27:19 **A.** I didn't know if it was junked there or not. That's 11:27:24 why I asked Rich Murtaugh.

11:27:27 **Q.** What did you ask Rich Murtaugh again?

11:27:30 **A.** I says did you junk Matt Duell's blue van and he 11:27:36 said yes, and then he kind of smiled and said no, Heidi was 11:27:42 not in it. This is -- could a body be crushed in the -- 11:27:51 junked, and he says naw, that would be too messy.

11:27:55 **Q.** I want to talk to you again a little bit more about 11:27:58 your investigation that you were talking about yesterday. 11:28:07 Did you write the name Julia Roberts on any of the notes 11:28:10 that were in your box?

11:28:11 MR. MOODY: Objection, leading.

11:28:12 THE COURT: Sustained.

11:28:15 THE WITNESS: Am I allowed to --

11:28:17 THE COURT: No, you can't respond, sir, sorry.

11:28:20 **Q.** Now, you mentioned when you were consulting with the 11:28:34 psychic yesterday, do you remember those questions I was 11:28:39 asking you about?

11:28:39 **A.** Yes.

11:28:40 **Q.** And after you got done consulting with the psychic, 11:28:53 you agreed with her that it involved three men and one 11:28:56 woman?

11:28:58 MR. MOODY: Objection, Judge. I don't
11:29:00 remember testimony --

11:29:00 THE COURT: He didn't testify to that,
11:29:02 definitely not. He didn't testify to that.

11:29:03 MS. PEEBLES: Well, I'm asking him after he
11:29:05 consulted with -- I'm asking what he thought.

11:29:08 THE COURT: Ask in non-leading form then.

11:29:10 **Q.** Mr. Bohrer, after you consulted with your psychic,
11:29:12 do you recall what conclusions were drawn after you
11:29:14 consulted with your psychic, Trudy Lortie?

11:29:17 THE COURT: Conclusions by whom?

11:29:19 MR. MOODY: Objection, Your Honor. That's
11:29:19 speculation.

11:29:20 MS. PEEBLES: By them.

11:29:20 THE COURT: By them or by him?

11:29:22 MS. PEEBLES: By Mr. Bohrer.

11:29:25 MR. MOODY: It's speculation because what
11:29:26 basis and knowledge does he either or the psychic have.

11:29:30 THE COURT: I agree. Purely speculative.
11:29:32 Sustained.

11:29:35 MR. OAKES: Excuse me, Your Honor. Can I
11:29:37 approach please?

11:29:38 THE COURT: Yes.

11:29:40 MR. OAKES: With counsel.

11:29:42 (Whereupon, there was an off the record

11:29:43 discussion at the bench).

11:30:32 **Q.** Mr. Bohrer, did you have any knowledge regarding Heidi Allen as a confidential informant?

11:30:41 **A.** Not at all until the day it was found.

11:30:49 **Q.** What was found?

11:30:51 **A.** It was announced that Christine, Matt's wife, had found -- it was brought to my attention that an ID card was found on the parking lot, this was like 9:30, ten o'clock in the morning. I think it was Wednesday the following after Easter Sunday and --

11:31:28 THE COURT: I'm going to strike that answer as being based completely on hearsay.

11:31:33 MR. MOODY: Judge, I object.

11:31:34 THE COURT: You can't continue in that line, sir.

11:31:37 **Q.** Mr. Bohrer, did you ever see the card that you're talking about?

11:31:40 **A.** No.

11:31:41 **Q.** But you knew about it?

11:31:50 **A.** It was brought to my attention and I heard it on the TV at twelve.

11:31:56 **Q.** At twelve?

11:31:58 **A.** (Nods). Yes. More to be announced at five, but at five o'clock no mention of it.

11:32:12 **Q.** Mr. Bohrer, when was that?

11:32:15 **A.** Not long after Heidi disappeared.

11:32:20 MR. MOODY: Objection, Judge. Could we have a
11:32:21 basis of time or knowledge on this?

11:32:23 THE COURT: Honestly, anything regarding the
11:32:25 CI status is completely based on hearsay. The Court's
11:32:29 disregarding it. No firsthand knowledge.

11:32:33 **Q.** Mr. Bohrer, I'm going to ask you some questions now
11:32:36 about the Liberty Bell Tavern. Do you know where the
11:32:39 Liberty Bell Tavern is?

11:32:41 **A.** Yes.

11:32:41 **Q.** And -- and where is the Liberty Bell Tavern located?

11:32:46 **A.** On State Route 11, Colosse.

11:32:52 **Q.** Was it close to where Medspars was located?

11:32:55 **A.** Yes.

11:32:55 **Q.** About how far away?

11:32:56 **A.** Less than a mile.

11:33:02 **Q.** Did you ever go to the Liberty Bell Tavern?

11:33:05 **A.** Yes, I did.

11:33:07 **Q.** Do you remember when you -- what year it was when
11:33:09 you'd go to the Liberty Bell Tavern?

11:33:12 **A.** No, I do not.

11:33:14 **Q.** Is the Liberty Bell Tavern closed?

11:33:17 **A.** No, it was not.

11:33:18 **Q.** No, closed now. I guess -- strike that. Is the
11:33:25 Liberty Bell Tavern still open establishment?

11:33:28 **A.** No, it's not.

11:33:29 **Q.** Do you know what year it closed?

11:33:31 **A.** No, I don't.

11:33:33 **Q.** And did you ever have an encounter with an
11:33:39 individual by the name of Tyler Hayes?

11:33:43 **A.** I believe so.

11:33:45 **Q.** Do you remember when that was?

11:33:50 **A.** I don't remember what year it was, it was quite a
11:33:54 while ago. He was a young kid. Guy. I don't remember
11:34:04 what year.

11:34:05 **Q.** Okay, and what was the nature of the confrontation
11:34:09 with Tyler Hayes?

11:34:10 MR. MOODY: I'm going to object.
11:34:11 Characterization as confrontation, Judge.

11:34:14 THE COURT: I'm going to sustain it to the
11:34:15 generalization. You haven't established there was a
11:34:18 confrontation.

11:34:18 **Q.** Did you have an encounter with Tyler Hayes at the
11:34:21 Liberty Bell Tavern?

11:34:25 **A.** Which one was Tyler Hayes? There were two guys.

11:34:34 **Q.** Okay, can you tell me who the other gentleman was?

11:34:38 **A.** There was a thinner one and I don't remember the
11:34:42 other guy's name. One was obnoxious, I believe it was
11:34:47 Tyler Hayes, and the other one was pretty levelheaded I
11:34:55 think.

11:34:55 **Q.** And what happened?

11:34:57 **A.** I believe it was Tyler Hayes that claimed that he was related to the Allen family, and I blareded (sic) out the words -- am I supposed to go any further here?

11:35:20 **Q.** Yes. Tell us what happened.

11:35:22 **A.** I'm not sure exactly how the Heidi Allen conversation came up, if he initiated or I did, but he identified himself as a relative of the Allen family, and I says you know that those boys didn't have anything to do with it, and he got a little more conversational about it and a little bit louder, and I mentioned that in the process of the conversation, I mean we're talking several minutes here, I said that I had a theory of where I think Heidi could be.

11:36:23 **Q.** Did you at any time during this encounter with Tyler Hayes cry?

11:36:30 **A.** No.

11:36:33 **Q.** You didn't cry at all?

11:36:34 **A.** No.

11:36:35 MR. MOODY: Objection, Judge. It's leading and asked and answered.

11:36:42 THE COURT: Sustained on both.

11:36:44 **Q.** At some point were you asked to leave the Liberty Bell Tavern?

11:36:48 **A.** Yes.

11:36:49 **Q.** And who asked you to leave?

11:36:51 **A.** The owner.

11:36:54 **Q.** And did you?

11:36:55 **A.** Yes.

11:36:56 **Q.** Mr. Bohrer, did anyone from Oswego County Sheriff's
11:37:03 Department ever contact you after that incident?

11:37:05 **A.** No.

11:37:06 **Q.** I'm going to ask you some questions going back to
11:37:13 Danielle Babcock when she used to work for you for East
11:37:17 Coast Resorts.

11:37:18 **A.** Yes.

11:37:20 **Q.** You --

11:37:20 THE COURT: Got it right there, Ms. Peebles.

11:37:21 MS. PEEBLES: I made it my mission today.

11:37:24 **Q.** Did you ever talk to Danielle Babcock about Heidi
11:37:30 Allen?

11:37:31 **A.** It's possible. I don't recall.

11:37:47 **Q.** Did you ever threaten Danielle Babcock?

11:37:50 **A.** Never.

11:37:52 **Q.** Did you ever tell Danielle Babcock that you would do
11:37:56 to her what you did to Heidi Allen?

11:37:58 MR. MOODY: I'm going to object. It's
11:38:00 leading, Judge.

11:38:01 THE COURT: Sustained. He already said he
11:38:06 never threatened her.

11:38:09 **Q.** Mr. Bohrer, since March twenty-first of 2013, have
11:38:17 you met with anyone either from the District Attorney's
11:38:20 Office or the Oswego County Sheriff's office?

11:38:25 **A.** No.

11:38:27 **Q.** Did you have a meeting with Mr. Oakes and your
11:38:30 attorney at any time?

11:38:37 MR. OAKES: Excuse me, Your Honor. Does he
11:38:39 know who I am? I don't know if he does or not.

11:38:42 THE COURT: Do you know who Mr. Oakes is?

11:38:44 THE WITNESS: Yes, I -- I know him and Mark.

11:38:47 THE COURT: Okay.

11:38:47 **A.** I did request a sit down with both the district
11:38:54 attorney and the assistant district attorney.

11:38:57 **Q.** And do you remember when that was?

11:39:01 **A.** Thursday before last I think or last Thursday?

11:39:07 **Q.** But recently?

11:39:08 **A.** Yes.

11:39:09 **Q.** How long was your meeting?

11:39:12 **A.** Three hours or so.

11:39:14 **Q.** Where was the meeting?

11:39:18 **A.** It was at the -- what is it, the DA's office or --

11:39:34 **Q.** Okay, right down --

11:39:35 **A.** Conference room.

11:39:36 **Q.** Okay. Now, did you go -- you went with your
11:39:40 attorney to meet with them?

11:39:42 **A.** Yes, I had my attorney with me.

11:39:44 **Q.** And did they talk with you about your testimony in
11:39:47 this case?

11:39:52 **A.** My testimony?

11:39:53 **Q.** Well, what did you talk about, how about that?

11:39:57 **A.** The contents of the box.

11:40:05 **Q.** What did they ask you about the box?

11:40:09 **A.** Whether that it was my box and whether I recognized
11:40:24 certain documents like you did. Pretty much what you --
11:40:30 you did, you know, identify this, identify that. I'm not
11:40:37 going to sit here and recite three hours of discussion.

11:40:44 **Q.** That was a long meeting three hours. Anything --

11:40:47 MR. MOODY: I'm going to object, Judge.
11:40:50 Relevance.

11:40:50 THE COURT: What's the relevance?

11:40:53 MS. PEEBLES: I'll withdraw the question.

11:40:54 THE COURT: Thank you.

11:40:55 **Q.** Is that the only meeting that you had with the
11:41:04 District Attorney's Office?

11:41:05 **A.** Yes.

11:41:05 **Q.** And had you been told at any time that you were not
11:41:10 a suspect?

11:41:16 MR. MOODY: Judge, I'm going to object to the
11:41:18 relevance.

11:41:19 THE COURT: Sustained.

11:41:20 **A.** I don't recall.

11:41:21 THE COURT: No, sustained. You don't have to answer the question.

11:41:23 **Q.** Do you think you're a suspect?

11:41:25 MR. MOODY: Objection, relevance.

11:41:26 THE COURT: Sustained. Don't need to answer the question, sir.

11:41:31 **Q.** I'm going to ask you a question about an individual named Carl Robinson. Do you know Carl Robinson?

11:41:37 **A.** Yes.

11:41:38 **Q.** How did you know Carl Robinson?

11:41:39 **A.** Young kid that needed help.

11:41:42 **Q.** How did you meet him?

11:41:45 **A.** Through one of the girls that worked there. Relative of his. Oh, his sister.

11:42:04 THE COURT: For my own clarification, you said the girls that worked there. You mean the girls making the calls?

11:42:08 THE WITNESS: Yes.

11:42:09 THE COURT: Thank you.

11:42:10 THE WITNESS: My smile and dialers.

11:42:12 **Q.** How -- do you remember what year that was?

11:42:18 **A.** I think it was probably 2001 or 2000.

11:42:24 **Q.** And you were operating your business Medspar?

11:42:27 **A.** Yes.

11:42:27 **Q.** Did Carl ever work with you at Medspar?

11:42:30 **A.** Yes, he did.

11:42:31 **Q.** Did you hire him?

11:42:33 **A.** Yes, I did.

11:42:34 **Q.** What was his position when you hired him?

11:42:36 **A.** Why -- surely didn't recommend the phone job with
11:42:45 his stutter, so I asked him if he would be interested in
11:42:48 learning how to repair computers.

11:42:52 **Q.** And that's what you do? Do you repair computers?

11:42:57 **A.** All electronics.

11:42:59 **Q.** You're a pretty smart guy, fair statement?

11:43:03 **A.** I like to think so.

11:43:05 **Q.** And you worked at IBM you said for ten years?

11:43:13 **A.** Twelve.

11:43:14 **Q.** Twelve? Now with regard to Carl Robinson, how long
11:43:21 did he work for you?

11:43:24 **A.** I believe close to three years.

11:43:26 **Q.** And was he working forty hours a week when he worked
11:43:32 for you?

11:43:35 **A.** How many hours a week?

11:43:38 **Q.** Well, was he working full time for you or was it
11:43:40 part time?

11:43:41 **A.** It was full time.

11:43:43 **Q.** Now, Mr. Bohrer were you ever selling marijuana back
11:43:52 in 1994?

11:43:53 MR. MOODY: Objection, Judge. Impeaching her own witness.

11:43:57 MS. PEEBLES: How's that impeaching?

11:43:59 MR. MOODY: It's leading.

11:44:00 THE COURT: It's leading. I'll sustain. It's leading.

11:44:03 **Q.** Have you ever sold any type of drug?

11:44:11 MR. MOODY: Objection, leading.

11:44:12 THE COURT: I'll allow it.

11:44:14 THE WITNESS: I plead the Fifth Amendment.

11:44:19 THE COURT: Five minutes. Go speak to your attorney. You don't plead the Fifth. Go speak to Mr. Bohrer. Speak to your attorney please.

11:44:29 MR. OAKES: Your Honor, can we approach?

11:44:32 THE COURT: Sure.

11:44:34 (Whereupon, there ws an off the record discussion at the bench).

11:48:30 (Whereupon, there was a recess).

11:48:30 **Q.** Mr. Bohrer, you can answer the question.

11:48:34 **A.** Yes. I sold marijuana to a few friends here and there.

11:48:39 **Q.** When did you start doing that?

11:48:44 **A.** I don't know.

11:48:46 **Q.** Were you doing that back in 1994?

11:48:50 **A.** Absolutely not.

11:48:52 **Q.** Do you know an individual by the name of Andrew Miller?

11:49:00 **A.** Andrew Miller? No.

11:49:03 **Q.** Did you collect a couple articles in your box that had to do with Andrew Miller?

11:49:09 MR. MOODY: Objection what's in the box, Judge. How's it relevant?

11:49:13 THE COURT: How do you tie this to relevant -- how is it relevant? How is it relevant?

11:49:18 MS. PEEBLES: Well, do you want me to make a full argument on the record?

11:49:22 THE COURT: Yes.

11:49:23 MS. PEEBLES: He just got done explaining that he was selling drugs and he was collecting articles specifically of people who were arrested and it --

11:49:30 THE COURT: No, he never answered affirmative to that question. You said --

11:49:34 MS. PEEBLES: I was asking --

11:49:35 THE COURT: You said did you collect articles about Andrew Miller. That was your question.

11:49:38 MS. PEEBLES: Yes.

11:49:39 THE COURT: How's whether or not he collected an article with Andrew Miller relevant?

11:49:43 MS. PEEBLES: Well, it's relevant if he's trying to keep track of Andrew Miller being arrested

11:49:47 for a drug offense if he's selling marijuana to him.

11:49:50 THE COURT: I don't think it's relevant at all so I'm going to sustain the objection.

11:49:54 **Q.** Other than information concerning Heidi Allen, did you have any other information in the box that didn't have anything to do with Heidi Allen?

11:50:02 MR. MOODY: I'd object, Judge. What's the relevance of what's in the box, whether or not it --

11:50:06 THE COURT: Sustained.

11:50:08 MS. PEEBLES: Well, can I be heard on that?

11:50:10 THE COURT: Sure. I apologize.

11:50:13 MS. PEEBLES: Your Honor, obviously it's our position that these items in the box were collected for a particular purpose and that would be to keep track of the investigation of the case involving Heidi Allen because he had a concern that their investigation would point to him and therefore the other documents in the box that he was collecting are directly relevant to whom he was keeping track of, so I think, Your Honor, that it is relevant.

11:50:41 THE COURT: I don't think it's relevant at all. Sustained.

11:50:45 **Q.** Do you recall what years you were selling marijuana, Mr. Bohrer?

11:51:04 **A.** What years? I mean I -- I suppose from ninety-seven

11:51:20 to 2001 maybe.
11:51:24 **Q.** Who were you buying it from?
11:51:27 MR. MOODY: I'm going to object, Judge,
11:51:28 relevance.
11:51:28 THE COURT: Sustained. What is the relevance
11:51:31 who he was buying from?
11:51:33 MS. PEEBLES: Well, Your Honor, it's our
11:51:34 position that Heidi Allen was abducted because she was
11:51:37 an informant and therefore his --
11:51:39 THE COURT: He just said he bought in ninety-
11:51:43 seven. That's when he started selling, ninety-seven.
11:51:46 MS. PEEBLES: I'm going to explore that a
11:51:47 little bit more, Judge.
11:51:47 THE COURT: Why don't you explore that first
11:51:49 before you have -- try to tie anything in about the
11:51:52 seller as being relevant?
11:51:53 MS. PEEBLES: It could reveal the time period
11:51:55 depending on who he's purchasing it from.
11:51:57 THE COURT: It's awfully speculative, Ms.
11:51:59 Peebles. I'm going to sustain the objection.
11:52:02 **Q.** Did you tell anybody about your knowledge concerning
11:52:15 the card that you were talking about regarding Heidi Allen?
11:52:20 MR. MOODY: Objection, Judge. Leading, time
11:52:22 frame.
11:52:22 THE COURT: I'm not sure. Did you say car?

11:52:27 MS. PEEBLES: Card, yes.

11:52:27 THE COURT: Oh, card. Time frame? Ask the
11:52:32 question.

11:52:32 **Q.** When you were -- when you testified when I asked you
11:52:34 the question about the -- you -- you mentioned the card.

11:52:38 **A.** Yes.

11:52:38 **Q.** Learning about the card. Did you tell anybody else
11:52:41 about what you learned with regard to that card?

11:52:44 MR. MOODY: Objection, Judge. He learned how?
11:52:48 I don't think we've established what he learned.

11:52:49 THE COURT: It's all based on hearsay.

11:52:51 MS. PEEBLES: Well, it's what was in his --

11:52:52 THE COURT: I'll allow the question. He can
11:52:55 tell people what he knows.

11:53:00 **A.** Ask the question again please.

11:53:03 **Q.** Did you tell anybody else about what you -- what you
11:53:06 learned about the card that you mentioned before?

11:53:11 **A.** Well, once it was on the news at twelve o'clock, a
11:53:17 lot of people were talking about it, me included.

11:53:21 **Q.** When was it on the news, sir?

11:53:23 **A.** Only once.

11:53:25 **Q.** And when was that?

11:53:27 **A.** The day that Christine turned it in, that morning,
11:53:32 and at twelve o'clock they said they were going to have
11:53:38 more at five, and at five o'clock they never talked about

11:53:42 it.

11:53:42 **Q.** And that was in 1991?

11:53:46 THE COURT: 1994.

11:53:48 **Q.** No, 1991.

11:53:50 **A.** Ninety-four.

11:53:50 **Q.** Ninety-one is when the card was found.

11:53:52 MR. MOODY: Objection, Judge. How does he
11:53:54 know? We've established his basis of knowledge and
11:53:56 what he was saying. He said it was, if I'm not
11:53:59 mistaken --

11:54:00 THE COURT: If I'm mistaken, I apologize. I
11:54:03 thought Ms. Peebles misspoke. Ms. Peebles, ask the
11:54:06 question again.

11:54:06 **Q.** Mr. Bohrer, when you learned about the information
11:54:09 from the card, Christine told you about that, is that --
11:54:11 that's what you're saying, Christine Duell told you about
11:54:14 the card?

11:54:15 MR. MOODY: Objection. I don't believe that's
11:54:18 what he said.

11:54:18 MS. PEEBLES: That is what he said.

11:54:19 THE COURT: I did not allow that answer
11:54:21 because it was based on hearsay. Mr. Bohrer is
11:54:23 indicating he learned about it on the news at noon.

11:54:25 THE WITNESS: I didn't say I heard it from
11:54:27 Christine at all.

11:54:28 THE COURT: Mr. Bohrer, we dealt with that,
11:54:29 sir.

11:54:29 **Q.** Okay, well, you said it was on the news. I'm trying
11:54:32 to pinpoint when it was on the news. It was the day they
11:54:35 found the card you said, right?

11:54:37 **A.** Yes.

11:54:37 **Q.** Okay, that's just -- I wanted to clear that up. So
11:54:41 the day they found the card, you heard it on the news?

11:54:44 **A.** At twelve o'clock news.

11:54:46 **Q.** Okay, and you don't remember when that was?

11:54:50 **A.** I believe it was Wednesday after Heidi's
11:54:55 disappearance. It was like three days after.

11:55:00 **Q.** Okay.

11:55:06 **A.** I mean I --

11:55:07 **Q.** Thank you.

11:55:08 **A.** -- I even thinking that who walks around with a narc
11:55:13 ID card? Ridiculous.

11:55:18 **Q.** And I guess getting back to my question, did you
11:55:20 tell anybody, did you specifically tell anybody about what
11:55:23 you learned the day her card was dropped in the parking
11:55:26 lot?

11:55:29 **A.** Yeah. It was new news.

11:55:33 **Q.** Who did you tell?

11:55:34 **A.** I have no idea.

11:55:37 **Q.** Did you talk about it with people at Murtaugh's

11:55:40 junkyard?

11:55:43 MR. MOODY: Objection. Time frame?

11:55:45 MS. PEEBLES: The day the card was found and
11:55:47 he learned about it.

11:55:48 **A.** No, strictly in the New Haven community initially.

11:55:55 **Q.** Okay, thank you, Mr. Bohrer. I appreciate it.

11:55:58 MS. PEEBLES: No further questions.

11:55:58 THE COURT: Okay, what we're going to do is
11:56:00 it's five to twelve, we're going to break until one.
11:56:03 Mr. Bohrer, I'll give you a break for lunch. No sense
11:56:06 starting cross-examination for five minutes. Any
11:56:08 objection, Ms. Peebles?

11:56:10 MS. PEEBLES: No, Judge.

11:56:11 THE COURT: Ms. Bianco?

11:56:13 MS. BIANCO: No, Your Honor.

11:56:14 THE COURT: Prosecution?

11:56:15 MR. OAKES: No, Your Honor, thank you.

11:56:16 THE COURT: We're in recess.

11:56:21 (Whereupon, there was a recess.)

01:01:51 THE COURT: Mr. Bohrer ready?

01:01:55 MR. WEGERSKI: Yes, he is.

01:02:22 THE COURT: Mr. Bohrer, you're still under
01:02:24 oath, sir, okay?

01:02:25 THE WITNESS: Pardon me, Your Honor?

01:02:26 THE COURT: You're still under oath, sir.

01:02:27 THE WITNESS: Yes, yeah.

01:02:27 THE COURT: Have a seat. I'm going to ask you
01:02:29 again, do you consent to having your testimony audio or
01:02:33 videotaped?

01:02:34 THE WITNESS: No.

01:02:36 MR. MOODY: I don't appear to be on, Judge.

01:02:39 THE COURT: Hum?

01:02:40 MR. MOODY: I don't appear to be on.

01:04:17 (Whereupon, there was a pause in the
proceeding.)

01:04:24 CROSS-EXAMINATION

01:04:26 BY MR. MOODY:

01:04:28 **Q.** Good afternoon, Mr. Bohrer.

01:04:30 **A.** Good afternoon.

01:04:31 **Q.** I'm going to ask you some questions, and if you
01:04:35 don't understand what I say to you or you need me to
01:04:37 rephrase something, let me know, okay?

01:04:39 **A.** Yes.

01:04:39 **Q.** All right? You mentioned that you had done some
01:04:46 kind of investigation into this case, disappearance of
01:04:51 Heidi Allen, is that accurate?

01:04:52 **A.** Yes.

01:04:53 **Q.** Can you tell us like how you did that, what'd you
01:04:56 do?

01:04:57 **A.** Basically be a fly on the wall.

01:05:02 **Q.** Whereabouts?

01:05:04 **A.** Started at Spinners.

01:05:07 **Q.** In the bar or -- at Spinners?

01:05:09 **A.** Yeah.

01:05:10 **Q.** Okay, and when you say you were a fly on the wall, did you just kind of sit there and listen to people talk about it?

01:05:16 **A.** Initially that's -- that's all it was, just gathering intel.

01:05:21 **Q.** Okay, and was that all you did?

01:05:26 **A.** What do you mean?

01:05:28 **Q.** Well, did -- after you sat in Spinners for awhile and listened to people talk, did you do more than that because you said "initially."

01:05:36 **A.** I started intervening in different cliques.

01:05:42 **Q.** When you say intervening, what do you mean?

01:05:45 **A.** Hang out with 'em.

01:05:48 **Q.** Okay.

01:05:49 **A.** Smoke weed.

01:05:51 **Q.** Okay, was one of those cliques the group of people and friends that the Thibodeaus might have been connected to?

01:05:59 **A.** No.

01:05:59 **Q.** Was there any point in time where you became close in location, I mean living close to any of the Thibodeaus

01:06:05 or any of their friends?
01:06:06 **A.** Yes.
01:06:07 **Q.** How did that come about?
01:06:08 **A.** I was trying to determine if Gary and Richard were
01:06:24 innocent or not so I thought I'd feel 'em out.
01:06:30 **Q.** So where did you move to? What -- what kind of
01:06:35 property or where?
01:06:36 **A.** I -- a gentleman next door to where Gary and his
01:06:43 wife and sometimes a few of their friends would hang out, I
01:06:50 purchased the trailer next door and paid the rent for the
01:06:55 lot that it was on.
01:06:56 **Q.** Who owned the lot?
01:06:58 **A.** Joe Murray's brother.
01:07:01 **Q.** Do you know his name?
01:07:03 **A.** No, I don't.
01:07:04 **Q.** And who'd you buy -- you said you bought the
01:07:06 trailer. Who'd you buy the trailer from?
01:07:08 **A.** From George Wallace.
01:07:11 **Q.** And do you know if George Wallace had any kind of
01:07:13 relationship with either Richard Thibodeau or Gary
01:07:16 Thibodeau?
01:07:17 **A.** I believe so.
01:07:17 **Q.** What was that relationship if you know?
01:07:19 **A.** I don't know what that relationship was exactly.
01:07:30 I -- I pretty much connected with George to acquire the

01:07:35 trailer 'cause he -- his sister lived next door to another
01:07:40 friend of mine and was just through association.

01:07:45 **Q.** Okay, do you know if -- if George Wallace testified
01:07:48 at Gary Thibodeau's trial?

01:07:50 **A.** No, I don't.

01:07:51 **Q.** Now you said they lived next door to a gentleman by
01:07:57 the name of Joe Murray?

01:07:58 **A.** Yes.

01:07:58 **Q.** Is that his -- is Joe his full name or his middle or
01:08:02 his first name or his middle name if you know?

01:08:04 **A.** I believe it was his first name.

01:08:07 **Q.** And he -- you said that -- that Gary and his wife --
01:08:13 what's his wife's -- what was his wife's name if you know?

01:08:16 **A.** Sharon.

01:08:17 **Q.** Sharon? They would sometimes go over there?

01:08:21 **A.** Yes.

01:08:21 **Q.** And when did you move into this trailer that you
01:08:24 bought from Mr. Wallace?

01:08:25 **A.** It was -- it was shortly before Gary's trial.

01:08:35 **Q.** Okay.

01:08:40 **A.** It was summertime I believe.

01:08:42 **Q.** And you said you were trying to intervene. What --
01:08:50 when you say you were trying to intervene with them, what
01:08:52 were you trying to do? What did you do I guess is
01:08:54 actually -- not trying to do, but what did you do?

01:08:57 A. Determine if they were in fact guilty.

01:09:02 Q. Well, how -- what did you do to try and determine that? Did you talk to them, did you -- just what did you do?

01:09:07 A. Feel 'em out.

01:09:08 Q. Feel 'em out?

01:09:09 A. Listen to, you know, their emotions.

01:09:18 Q. Okay.

01:09:23 A. Just listen to the, you know, conversations and --

01:09:32 Q. Did you ever actually confront anyone about whether or not they were involved in Heidi Allen's kidnapping?

01:09:39 A. You mean like directly ask did you do it?

01:09:42 Q. Yeah.

01:09:42 A. No.

01:09:43 Q. Now you said that this investigation was kind of prompted by the sign, and I think it used to be on County Route 1? Or County Route 6. I could be wrong on --

01:10:05 A. 104.

01:10:06 Q. It was on 104, the sign on 104, and that sign said, "Where is Heidi?"

01:10:12 A. Correct.

01:10:12 Q. And that made you feel how?

01:10:14 A. Impelled to look for her. Answer the question.

01:10:19 Q. Now, you mentioned that you did something for IBM. What did you do for IBM?

01:10:24 **A.** The last thing I was doing was prototyping applications with artificial implications.

01:10:38 **Q.** Okay, why did you end up -- how did you end up not working for IBM? What happened?

01:10:43 **A.** Executive burnout.

01:10:46 **Q.** Was that like a medical diagnosis or --

01:10:51 **A.** Yes.

01:10:52 **Q.** And --

01:10:54 **A.** Due to extreme stress is what it was.

01:10:57 **Q.** Okay, and after you got this diagnosis, did you get any kind of treatment or --

01:11:07 **A.** Yes, I did.

01:11:09 **Q.** And how long did that treatment last?

01:11:12 **A.** Talking about outpatient?

01:11:17 **Q.** Yeah.

01:11:17 **A.** After I left IBM?

01:11:20 **Q.** Okay.

01:11:20 **A.** Hospital was over, and I didn't stay with the outpatient program in Oswego for very long.

01:11:29 **Q.** Now you said you were in an outpatient program, and were you in some kind of inpatient program then too?

01:11:37 **A.** Well, I was hospitalized while working for IBM for --

01:11:42 **Q.** And that was related to the stress?

01:11:44 **A.** Yes.

01:11:45 **Q.** Now, moving back to the time period when you -- after Heidi got kidnapped, you were living at Spinners just up the road on 104B, right?

01:12:05 **A.** Yes.

01:12:06 **Q.** You had mentioned that you came here and -- for a wedding and stayed at Spinners?

01:12:12 **A.** Correct.

01:12:13 **Q.** And then you decided I guess to stay?

01:12:15 **A.** Yes.

01:12:16 **Q.** What prompted you to decide to stay?

01:12:19 **A.** Well, being that I was retired, what do you do with the rest of your life?

01:12:26 **Q.** So you rented a house, you called it a four-bedroom ranch?

01:12:30 **A.** Correct.

01:12:31 **Q.** And then at some point obviously between when you rented the house and when Heidi disappears, you decide to go back to Spinners to live there. What prompted that?

01:12:42 **A.** I had my personal safe stollen out of the house.

01:12:48 **Q.** Was it a burglary or something or --

01:12:51 **A.** Yes.

01:12:52 **Q.** Okay, was that the only time your house was burglarized?

01:12:57 **A.** At that residence, yes.

01:12:59 **Q.** Okay, when you say at that residence, were there

01:13:01 other residences where something like that happened?

01:13:04 **A.** I -- I stopped counting in 1997. It was up to
01:13:11 twenty-seven.

01:13:12 **Q.** So twenty-seven times your house was burglarized?

01:13:15 **A.** Yes.

01:13:15 **Q.** What kind of stuff were they taking?

01:13:17 **A.** Food, checkbooks. I forgave one guy, took all of my
01:13:27 food out of the cabinets, refrigerator, and left me one
01:13:31 meal, so I thought that was nice of him.

01:13:35 **Q.** If you are going to take all -- you don't want to
01:13:38 take all of somebody's food. Did anybody ever got caught
01:13:40 or arrested?

01:13:41 **A.** The rest of them did.

01:13:42 **Q.** Did anybody ever get caught or arrested for any of
01:13:46 those?

01:13:46 **A.** No.

01:13:47 **Q.** Now you mentioned that a couple of weeks after Heidi
01:13:52 was kidnapped or a short while after Heidi was kidnapped,
01:13:56 you were stopped along the side of the road. Was that a
01:13:58 traffic stop or was it in like a road block?

01:14:02 **A.** Repeat the question?

01:14:04 **Q.** Sure, sure. You remember testifying yesterday about
01:14:08 being -- being -- talking to somebody along the side of the
01:14:11 road, do you remember that, right after Heidi was
01:14:15 kidnapped?

01:14:15 **A.** Talking about when the investigators --

01:14:17 **Q.** Yeah.

01:14:17 **A.** Oh, okay.

01:14:18 **Q.** Was that at a traffic stop like did you get pulled over or was it a road block?

01:14:22 **A.** Neither.

01:14:23 **Q.** Neither. How'd it come about?

01:14:26 **A.** I -- I believe the -- I don't remember if it was Investigator Wheeler or a deputy, just flipped the lights on a little bit, wanted to -- that's it, and I pulled over.

01:14:46 **Q.** And you mentioned that back at the time when -- when Heidi was kidnapped, that you were driving a Galaxy I think you said?

01:14:57 **A.** Yes.

01:14:58 **Q.** What kind of -- I'm not familiar with that. What is -- what kind of car is that?

01:15:01 **A.** It's a Ford.

01:15:02 **Q.** Ford. Is it a van or --

01:15:03 **A.** No, it's a Galaxy 500.

01:15:06 **Q.** Like a sedan?

01:15:07 **A.** Four door.

01:15:08 **Q.** Four-door sedan?

01:15:10 **A.** Yep.

01:15:10 **Q.** And do you remember the color of that?

01:15:15 **A.** Metallic green.

01:15:18 **Q.** Now, and then you were asked some questions about -- about a year later or so, speaking again with the Sheriff's Department. Do you remember speaking with them then, about a year later?

01:15:42 **A.** About the theft of my safe?

01:15:46 **Q.** No, about -- about Heidi.

01:15:49 **A.** Yes.

01:15:51 **Q.** Okay, would that have been on March twenty-first of ninety-five?

01:15:59 **A.** It was spring.

01:16:03 **Q.** Was spring?

01:16:04 **A.** Yep.

01:16:04 **Q.** Do you remember if it was Investigator Yerdon and Investigator Wheeler, Bob Wheeler?

01:16:08 **A.** Yes, it was.

01:16:09 **Q.** Okay, and you told them at that point in time didn't you that you had been praying and in your prayers talking to Heidi, do you remember telling them that?

01:16:19 **A.** Yes.

01:16:19 **Q.** And one of the things that -- that Heidi told you was to go talk to her mom and dad, do you remember that?

01:16:27 **A.** Yes, she did.

01:16:28 **Q.** Okay, and did you try and go and talk to Ken and Sue Allen?

01:16:33 **A.** Yes, I did.

01:16:33 **Q.** And what happened when you did that?

01:16:36 **A.** They called the sheriffs and I didn't have a chance to give them their message.

01:16:43 **Q.** Okay, did you end up having to go over to Bunner Street to mental health?

01:16:47 **A.** Yes.

01:16:48 **Q.** And now during the course of your investigation, you said it's -- it kind of lasted until Investigator Pietroski and Investigator Johnson came to talk to you and kind of took your box, right?

01:17:07 **A.** Correct.

01:17:07 **Q.** At any point in time did you speak with Richard Thibodeau after his trial in say 1996?

01:17:18 **A.** After his trial.

01:17:22 **Q.** In August of 1996, do you remember speaking with him?

01:17:25 **A.** After Richard's trial or Gary's trial?

01:17:30 **Q.** After Richard Thibodeau's trial which was in September of 1995, did you at some point in August of 1996 talk to Richard?

01:17:40 MS. PEEBLES: Judge, I'll stipulate that he did.

01:17:42 **A.** I don't know.

01:17:42 THE COURT: Hold on.

01:17:43 MR. PEEBLES: If he wants to introduce the

01:17:45 document that indicates that he spoke with Richard
01:17:47 Thibodeau, I have no objection.

01:17:49 MR. MOODY: I'm going to be refreshing his
01:17:51 recollection if he doesn't remember, Judge.

01:17:52 THE COURT: She will stipulate that he did
01:17:54 talk.

01:17:54 MR. MOODY: I thought you were stipulating to
01:17:56 the document.

01:17:57 MS. PEEBLES: I'll stipulate to the document
01:17:58 and his testimony that he actually spoke with him in
01:18:01 August.

01:18:01 **A.** More than likely I had spoken with him in regards
01:18:05 to, you know, congratulations or whatever.

01:18:09 **Q.** Okay, and it was about a month later that you and
01:18:13 Trudy Lortie went up to see Gary, so in September of
01:18:17 ninety-six?

01:18:18 **A.** I'm -- that was after. I'm not sure exactly where
01:18:28 things fall.

01:18:29 **Q.** Okay, all right.

01:18:31 **A.** I don't have a timeline in my head that's very
01:18:36 detailed.

01:18:37 MS. PEEBLES: Judge, can we approach just for
01:18:39 a minute?

01:18:41 THE COURT: Sure.

01:18:44 (Whereupon, there was an off the record

01:20:14 discussion at the bench.)
01:20:14 THE COURT: Back live. Ms. Peebles, you're
01:20:24 now satisfied that you did have a copy of the notes
01:20:26 that Mr. Moody was reviewing?
01:20:28 MS. PEEBLES: I thought he was referring to a
01:20:29 statement that I hadn't seen. It was just the notes so
01:20:32 I'm good with that.
01:20:33 THE COURT: Okay, thank you. Go ahead, Mr.
01:20:35 Moody, continue.
01:20:36 MR. MOODY: I forgot where I was.
01:21:00 (Whereupon, the court reporter read back the
01:21:00 last question).
01:21:01 **A.** I recall Trudy and I going to see Gary, yes.
01:21:05 **Q.** But you don't remember exactly when it was?
01:21:07 **A.** Not the exact date. I'm sure I'm in the book
01:21:12 somewhere.
01:21:13 **Q.** Okay, now besides speaking with the Sheriff's
01:21:19 Department in early -- the early part of 1995, say in
01:21:25 February or March of 1995, you were asked some questions --
01:21:28 you also went to speak with the Federal Bureau of
01:21:30 Investigation, the FBI?
01:21:32 **A.** Yes.
01:21:32 **Q.** All right, was it your understanding that they were
01:21:34 involved in this investigation also?
01:21:46 **A.** I didn't go to the FBI after Gary's trial.

01:21:55 **Q.** I'm talking before Gary's trial, I'm sorry. If I confuse you on dates, just let me know.

01:22:00 **A.** Okay.

01:22:01 **Q.** Before or around the same time that you spoke with Investigator Wheeler and Investigator Yerdon and told them about praying to Heidi, did you also go speak to the FBI?

01:22:11 **A.** No. I attempted to when I was living on Green Road.

01:22:19 **Q.** Okay, well, do you remember the report that you looked at yesterday?

01:22:22 **A.** Yes.

01:22:22 **Q.** Okay, was that -- was that a report about what you told the FBI?

01:22:27 **A.** I recall that report, yes.

01:22:33 **Q.** So my question was did you speak with the FBI then?

01:22:35 **A.** Yes, I did.

01:22:36 **Q.** And was it your understanding that they were also involved in the investigation into what happened to Heidi Allen?

01:22:43 **A.** I wasn't aware that they were officially.

01:22:46 **Q.** What made you go talk to them then?

01:22:49 **A.** Because I thought Oswego County Sheriffs need some help.

01:22:53 **Q.** Okay.

01:22:54 **A.** And I as a citizen I -- I thought this is crazy, so I thought somebody needed to --

01:23:09 **Q.** Now you mentioned that you -- that you had -- you
01:23:15 had also -- well, besides speaking with the FBI, excuse me,
01:23:21 did you also phone in some tips to the -- to the Sheriff's
01:23:29 Department?

01:23:29 **A.** I don't remember phoning in tips.

01:23:38 **Q.** Do you remember in -- in April thirteenth of
01:23:44 ninety-four phoning in something about seeing a guy in
01:23:48 military fatigues and a gray pickup truck near 104 and
01:23:56 104B?

01:24:01 **A.** It slips my mind.

01:24:06 **Q.** Okay. Do you remember phoning -- do you remember
01:24:12 calling the Sheriff's Department about a red truck that you
01:24:15 thought was suspicious that you had seen a couple of times?

01:24:17 **A.** Yes, yes.

01:24:17 **Q.** What did you tell them about that?

01:24:19 **A.** That was in response to a request by the community
01:24:28 to come forward with anything suspicious that you may have
01:24:32 or think you saw on and/or around or before Heidi's
01:24:41 disappearance, and I had an encounter with two gentlemen
01:24:47 sitting in a red truck and it was -- they were parked in
01:24:55 front of the stop sign kind of in Spinners' parking lot,
01:25:01 and I was on my way on six, I had to stop at the stop sign
01:25:12 and -- of 104B, and I thought I saw Richard Thibodeau in
01:25:19 the red truck, and I kept looking over, kept looking over,
01:25:27 finally turned and looked at me and I -- whoa, it's not

01:25:32 Richard Thibodeau, because Richard had asked me to look for a truck, his -- his van wasn't working well and it was giving him a lot of trouble, and he asked me if I could find a used truck that wasn't too damaged, and I liked Richard. I didn't care for you, Gary.

01:25:58 THE DEFENDANT: I don't even know you.

01:26:00 **A.** But I was trying to look for a truck for him, and when he asked me, I mentioned Matt Duell I heard was wanting to sell his truck, and so that's what led to my paying attention.

01:26:17 **Q.** To trucks?

01:26:19 **A.** To the truck because I thought it was Richard and he had purchased a truck so he didn't need to have me find a truck any more and I was going to congratulate him.

01:26:31 **Q.** So it turned out not to be Richard in the truck?

01:26:34 **A.** Correct.

01:26:34 **Q.** And you reported that to the Sheriff's Department that you saw this truck there around the time of Heidi's disappearance?

01:26:42 **A.** The red truck and the two men in the truck.

01:26:44 **Q.** Now you were asked some questions -- well, actually I'm going to withdraw that portion. Now, you were asked some questions about your relationship with the Murtaughs and their scrap yard.

01:27:31 **A.** Um hum.

01:27:32 **Q.** Is that -- all right. Now, when was the last time you scrapped anything at Murtaugh's junkyard?

01:27:42 **A.** I don't remember what year. It was spring.

01:27:51 **Q.** But you don't remember what year but it was in the springtime?

01:27:58 **A.** Yes.

01:27:58 **Q.** And at some point in time you asked one of the Murtaughs, and was it young Rich or his father?

01:28:08 **A.** Junior.

01:28:09 **Q.** It was junior, about scrapping Matt Duell's van?

01:28:12 **A.** I -- yeah, I flat out asked him did you scrap Matt Duell's blue van.

01:28:19 **Q.** When you said Matt, did you say Matt Duell's van or did you say a blue van?

01:28:23 **A.** Matt Duell's van.

01:28:25 **Q.** Matt Duell's van? Now, you mentioned that you talked to -- you sat -- you started your investigation I guess by basically being a fly on the wall in Spinners.

01:28:51 **A.** Correct.

01:28:51 **Q.** Did you go to any other bars or any other locations and be a fly on the wall?

01:28:56 **A.** Yeah. I focussed primarily three bars, Spinners, Texarcana in little Texas, and once in a while at Beck's Hotel.

01:29:11 **Q.** At Beck's Hotel?

01:29:12 **A.** Yeah.

01:29:12 **Q.** And that used to be located in Mexico at the corner
01:29:16 of 104 and three north?

01:29:18 **A.** Yes.

01:29:20 **Q.** And when you went to Texarcana, did you do the same
01:29:34 thing you did at Spinners, just kind of be a fly on the
01:29:37 wall and listen to people talk?

01:29:39 **A.** Well, I also enjoyed myself.

01:29:41 **Q.** Well, fair enough, but I'm talking about with regard
01:29:44 to your investigation.

01:29:45 **A.** Yes, just always my ear open.

01:29:47 **Q.** Okay. Now, with regard to Beck's Hotel, did you do
01:29:51 the same thing there, sit in the bar and listen to people
01:29:54 talk with regards to your investigation?

01:29:58 **A.** Like I said, I just had my ear open, you know.

01:30:02 **Q.** So you heard a lot of people talk about what their
01:30:06 theories were about what happened to Heidi, is that
01:30:10 accurate?

01:30:10 **A.** Yeah, pretty -- pretty much so.

01:30:12 **Q.** A lot of people telling you about the rumors or
01:30:15 things that they had heard?

01:30:16 **A.** Yep.

01:30:18 **Q.** Now, the New Haven/Mexico community at the time that
01:30:23 Heidi disappeared, I would assume that that was probably on
01:30:27 a lot of people's minds and a lot of people talking about

01:30:29 it, is that accurate?

01:30:31 **A.** Practically the only thing.

01:30:33 **Q.** So fair to say you heard a lot of people telling a
01:30:37 lot of different things, is that accurate?

01:30:38 **A.** Yeah, but I paid more attention to the people that
01:30:42 actually came forward to me.

01:30:44 **Q.** When you say "came forward to me," what do you mean?

01:30:46 **A.** The first month of her disappearance, well, actually
01:30:55 I should say like the first week or so 'cause I made it
01:31:04 known that I'll tear this place apart, I'll -- I'll -- I'll
01:31:09 try to find her, and I hauled away a lot of -- a lot of
01:31:15 cars, a lot of scrap doing so, and New Haven went quiet
01:31:28 when her cousin passed away.

01:31:31 **Q.** Was that her cousin Shaughnessy Searles (ph)?

01:31:35 **A.** Heidi's best friend and cousin, she died on a
01:31:41 motorcycle accident.

01:31:42 **Q.** Do you know her name?

01:31:43 **A.** No, I don't.

01:31:44 **Q.** Okay. Now, when you -- besides sitting in a bar or
01:31:58 sitting on a stool in those bars listening to people talk,
01:32:01 did you do anything else to investigate this?

01:32:04 **A.** I don't know what much more there was to do but --

01:32:20 **Q.** Well, you got some documents.

01:32:23 **A.** Hum?

01:32:23 **Q.** You got some documents, some statements, that kind

01:32:26 of thing.

01:32:26 **A.** Yeah, collecting documents, of course, yeah, because I -- I needed to look at these statements closely.

01:32:36 **Q.** Okay.

01:32:36 **A.** And there's the answer there somewhere.

01:32:40 **Q.** Now, so if I understand you correctly, Mr. Bohrer, 01:33:19 before Gary's trial you had heard that Heidi Allen was a 01:33:24 confidential informant, is that right?

01:33:26 **A.** Correct.

01:33:27 **Q.** And you had heard somewhere along the line that some 01:33:30 kind of card or documentation had been --

01:33:32 **A.** Before she was? No.

01:33:33 **Q.** Not before, not before she disappeared, before 01:33:36 Gary's trial.

01:33:36 **A.** Correct.

01:33:37 **Q.** And you had also heard -- well, I'm going to back up 01:33:40 just to make sure that the record is clean. Before Gary 01:33:43 went to trial, you had heard that Heidi Allen was a 01:33:46 confidential informant, is that accurate?

01:33:49 **A.** Yeah, that's what I heard.

01:33:50 **Q.** Okay, and before Heidi's trial, or excuse me, Gary's 01:33:56 trial, you had also heard that some type of documentation 01:33:58 had been dropped in the parking lot at D&W, is that 01:34:05 accurate?

01:34:05 **A.** I only know about the card.

01:34:07 **Q.** Well, that's -- I don't want -- you called it a couple different things, a narc card and a card. This card had been dropped, and you knew about that before Gary's trial?

01:34:15 **A.** Yes.

01:34:16 **Q.** Now, with regards to the investigation you have done, have you reached some kind of conclusion about whether or not Gary and Richard Thibodeau are involved?

01:34:30 **A.** I -- I was -- before I moved next door to him?

01:34:37 **Q.** No, no, you -- you said this investigation has taken you twenty years.

01:34:41 **A.** Um hum.

01:34:42 **Q.** And I assume in the twenty years you've developed some kind of of opinion about whether or not Richard and Gary are involved.

01:34:48 **A.** Oh, yeah.

01:34:49 **Q.** Is that accurate?

01:34:50 **A.** Back and forth, back and forth.

01:34:52 **Q.** Okay, what's your -- you say back and forth. What's your current opinion about whether they were involved?

01:34:58 **A.** My investigation, my documents I gave to you, I'm leaving it to the mercy of the Court to get to the truth.

01:35:11 **Q.** Fair enough.

01:35:14 MR. MOODY: I have no further questions, Judge.

01:35:18 THE COURT: Just a second please, Ms. Peebles.

01:35:21 MS. PEEBLES: Okay, sure.

01:35:24 (Whereupon, there was a pause in the
01:35:39 proceeding.)

01:35:39 MR. OAKES: Your Honor, before Mr. Moody --
01:35:49 can I talk to him one second?

01:35:50 THE COURT: Sure.

(Whereupon, there was a pause in the
01:35:55 proceeding).

01:35:55 MR. MOODY: Could I ask one further question?

01:35:58 THE COURT: Yes.

01:35:58 MR. OAKES: A couple.

01:36:01 MR. MOODY: If I may.

01:36:02 THE COURT: Never know a lawyer to ask just
01:36:05 one question, Mr. Moody.

01:36:06 MR. MOODY: That's the most of the third year
01:36:08 of law school is how to ask one question several times.

01:36:12 **Q.** Mr. Bohrer, were you personally involved in any way
01:36:21 in the abduction of or kidnapping of Heidi Allen?

01:36:25 **A.** No.

01:36:26 **Q.** Do you have any idea whether -- any -- who was,
01:36:29 personally know who was?

01:36:31 **A.** I have my theories.

01:36:34 **Q.** Okay, and you said you'd leave that to the Court,
01:36:36 but you have no personal knowledge of whether James Steen

01:36:39 was involved?

01:36:41 **A.** No.

01:36:42 **Q.** Do you have any personal knowledge whether Roger
01:36:45 Breckenridge was involved?

01:36:46 **A.** No.

01:36:46 **Q.** Do you have any personal knowledge whether Gary
01:36:49 Thibodeau was involved?

01:36:50 **A.** No.

01:36:50 **Q.** Do you have any personal knowledge whether Richard
01:36:52 Thibodeau was involved?

01:36:53 **A.** No.

01:36:54 **Q.** Thank you.

01:37:03 MR. OAKES: Your Honor, I think that was
01:37:09 seven.

01:37:10 THE COURT: Yeah. Ms. Peebles, go ahead.

01:37:17 REDIRECT EXAMINATION

01:37:18 BY MS. PEEBLES:

01:37:19 **Q.** Mr. Bohrer, when I was questioning you yesterday, I
01:37:47 gave you a document from a statement that you gave to the
01:37:50 FBI. Do you remember that?

01:37:51 **A.** Yes.

01:37:51 **Q.** And you had a chance to look at that over the lunch
01:37:54 hour and you read through that?

01:37:55 **A.** Yes.

01:37:56 **Q.** And isn't it true that you told the FBI that the

01:37:59 Thibodeaus were involved and it was over drugs, isn't that
01:38:03 what you told the FBI in 1995?

01:38:07 **A.** I believe it was put down as theory.

01:38:13 **Q.** So you theorized that the Thibodeaus were involved
01:38:16 in 1995 and that's what you told the FBI?

01:38:18 **A.** Correct.

01:38:19 **Q.** And you told them it was a drug motive?

01:38:22 **A.** Yes.

01:38:22 **Q.** Now, I want to get back to that index card that we
01:38:26 were talking about earlier and then Mr. Moody had asked you
01:38:29 some questions about that. If I remember correctly, you
01:38:31 said that you were made aware of that the day the card was
01:38:34 found in the parking lot, is that correct?

01:38:36 **A.** Yes, somebody --

01:38:39 **Q.** Someone found it?

01:38:41 **A.** Well, somebody told me that did you hear the latest
01:38:45 news. I says what happened now. And they says Christine
01:38:54 found a card in the parking lot, and immediately I thought
01:38:58 that was very strange.

01:39:00 **Q.** And you learned like right around the time that the
01:39:02 card was found in the parking lot. I don't want to put
01:39:06 words in your mouth, but that's what you're testifying here
01:39:09 to today, correct?

01:39:10 **A.** Say that again.

01:39:11 **Q.** You found out about it the day or shortly -- the day

01:39:18 it was found.

01:39:19 **A.** Correct.

01:39:20 **Q.** Now, I want to ask you some questions about Beck's
01:39:26 motel or hotel. You were talking about that on
01:39:30 cross-examination?

01:39:30 **A.** Yes.

01:39:30 **Q.** How often did you go to the Beck's Hotel?

01:39:33 **A.** Not very often.

01:39:35 **Q.** Well, could you -- can you give me an estimate as to
01:39:40 how often?

01:39:40 **A.** Once or twice a month maybe.

01:39:41 **Q.** And that's back in 1994?

01:39:44 **A.** Not at all in ninety-four I don't believe.

01:39:51 **Q.** Oh, you didn't go there at all in 1994?

01:39:53 **A.** Nope. Ninety-four I was primarily Spinners and
01:39:58 Texarcana.

01:39:58 **Q.** Okay, so when you were going to the Beck's motel,
01:39:59 you said you were going there to conduct your
01:40:02 investigation, that's what you testified to on your
01:40:04 cross-examination.

01:40:05 **A.** Well, any -- any time, I was twenty-four seven
01:40:11 listening.

01:40:12 **Q.** Okay, but I'm talking --

01:40:13 **A.** If I happen to go to Beck's, that's -- then it was
01:40:16 there. There's a bar across the street where I think I

01:40:25 first met Richard maybe.

01:40:30 **Q.** Now when you were at --

01:40:31 **A.** Before all this.

01:40:32 **Q.** -- Beck's, did you ever meet Brett Law at Beck's
01:40:37 motel?

01:40:38 **A.** No, I -- I didn't know Brett until after Heidi's
01:40:42 disappearance.

01:40:43 **Q.** How did you --

01:40:43 **A.** And I've never met him personally.

01:40:45 **Q.** How did you -- how did you -- what -- did you ever
01:40:47 meet him, ever meet Brett Law?

01:40:49 **A.** I don't believe so.

01:40:51 **Q.** How did you know who he was?

01:40:53 **A.** From the newspaper coverage, TV coverage, the story
01:41:00 behind what happened to Heidi that day and the fact that he
01:41:04 was there in the morning when she opened, before she was
01:41:10 abducted, and he left. I guess he said he had coffee and
01:41:18 donuts with her.

01:41:19 **Q.** Do you know what time Brett Law left the D&W that
01:41:23 morning?

01:41:24 MR. MOODY: I'm going to object, Judge. How
01:41:26 was the personal knowledge here?

01:41:27 MS. PEEBLES: Well, I'm trying to find out.

01:41:29 THE COURT: Can you ask him if he has any
01:41:31 personal knowledge of when he left.

01:41:34 **Q.** Do you have personal knowledge as to when Brett Law
01:41:37 left the D&W that morning?

01:41:38 **A.** Personal knowledge? Does that mean I was standing
01:41:41 outside the store and see him leave?

01:41:43 **Q.** Not necessarily.

01:41:44 **A.** I believe it's a matter of record, that's my
01:41:49 knowledge.

01:41:49 **Q.** Well, do you know? Do you know a time?

01:41:52 **A.** I'm fuzzy on the times. Any times and dates, it's
01:42:02 well documented in statements, so if it's on a statement,
01:42:09 that's the -- that's the data that I stuck with.

01:42:15 **Q.** You indicated that you were collecting these reports
01:42:23 and studying them, that -- the reports pertaining to
01:42:28 eyewitness accounts of what took place that morning?

01:42:30 **A.** Correct.

01:42:30 **Q.** Now you indicated to Investigator Pietroski and
01:42:34 Investigator Johnson that Bivens' first statement was the
01:42:38 closest to the truth.

01:42:40 **A.** Correct.

01:42:41 **Q.** And you knew that that was closest to the truth,
01:42:44 correct?

01:42:44 **A.** For several reasons.

01:42:46 **Q.** Can you explain what those reasons are?

01:42:48 **A.** Primarily the incident with the red truck and who I
01:42:56 saw in the red truck directed my ideas as to who is really

01:43:09 behind it.

01:43:11 **Q.** Does Mr. Bivens say anything about a red truck in
01:43:14 his statement, his first statement?

01:43:19 **A.** Bivens?

01:43:20 **Q.** Bivens, yep.

01:43:22 **A.** No.

01:43:22 **Q.** What does Mr. Bivens say in his first statement
01:43:25 about what he observed that morning?

01:43:28 MR. MOODY: Judge, I'm going to object. I
01:43:30 think we're getting a little bit in hearsay and far
01:43:32 afield.

01:43:32 THE COURT: It's definitely hearsay. It's
01:43:36 getting a little far afield.

01:43:37 THE WITNESS: No, it's in his statement.

01:43:39 THE COURT: No, you can't testify to what Mr.
01:43:41 Bivens said. It's hearsay.

01:43:42 **Q.** You mentioned Shaughnessy (ph). Who is -- who is
01:43:46 Shaughnessy?

01:43:47 **A.** Well, the name rings a bell.

01:43:50 **Q.** Well, didn't you testify just on cross-examination
01:43:53 about a cousin of -- or --

01:43:55 **A.** Oh, okay, that's her name?

01:43:57 MR. MOODY: Judge, I'm going to object. I
01:43:59 think he said on cross he didn't know her name.

01:44:00 THE COURT: He didn't know her name.

01:44:02 Sustained.

01:44:02 **Q.** Well, pardon me. Why don't you tell me again what you knew about the cousin of Heidi Allen who was killed in a motorcycle accident.

01:44:15 **A.** Prior to the motorcycle accident, two women approached me. I believe one of them was the cousin and the other one was a girlfriend of the cousin. They both said that they were close to Heidi and they fed me some information.

01:44:42 **Q.** And do you know whether or not they were using any type of drugs?

01:44:49 MR. MOODY: I'm going to object, Judge. Relevance, beyond the scope of cross and --

01:44:53 THE COURT: Beyond the scope. There's no foundation if he has any knowledge of them using drugs.

01:44:57 **Q.** What type of relationship did you have with Heidi Allen's cousin?

01:45:01 **A.** None.

01:45:01 **Q.** And where did you meet her for the first time?

01:45:04 **A.** What we're talking about is a person that came forward.

01:45:08 **Q.** Okay, but can you please tell me when this person came forward?

01:45:13 **A.** It was sometime after -- definitely after Wednesday.

01:45:35 **Q.** Wednesday of Heidi Allen?

01:45:36 **A.** Yeah, the Wednesday after Heidi disappeared, and
01:45:41 before she died on the motorcycle accident which I think
01:45:46 was the following -- that Friday.

01:45:47 **Q.** Okay, so in between the time Heidi Allen disappeared
01:45:50 and her motorcycle accident, she came knocking on your door
01:45:53 and said I have some information or --

01:45:54 **A.** No, they approached -- they approached me public, in
01:45:58 the public setting.

01:45:59 **Q.** Can you -- where was the public -- where did that
01:46:01 happen?

01:46:07 MR. MOODY: Judge, is there any relevance to
01:46:10 this at all?

01:46:11 MS. PEEBLES: I'm following up. He brought it
01:46:12 up on cross-examination and it's not beyond the scope.

01:46:14 THE COURT: Beyond the scope, he did bring it
01:46:16 up, but got to bring something to the point of
01:46:19 relevance soon please.

01:46:21 **Q.** Did she confront you or ask you about Heidi Allen's
01:46:26 disappearance?

01:46:27 **A.** No.

01:46:28 **Q.** Tell me what she -- why -- why would she pick you
01:46:31 out to go to you?

01:46:33 MR. MOODY: Objection.

01:46:33 **A.** She heard --

01:46:34 THE COURT: Stop.

01:46:35 MR. MOODY: Speculation.

01:46:36 THE COURT: Sustained.

01:46:36 **Q.** Well, tell the Court how it was that you came into
01:46:40 contact with Heidi Allen's cousin.

01:46:42 **A.** It seems to me it was a parking lot setting. I
01:46:49 don't remember if it was Beck's or Spinners. No, it was in
01:46:59 New Haven I think. I don't know. I don't remember where,
01:47:04 but I believe it was a parking lot setting.

01:47:07 **Q.** How long was this meeting?

01:47:10 **A.** It was brief, but she was saying that -- well,
01:47:23 she -- she asked me, she says you're looking into Heidi's
01:47:30 disappearance aren't you? And I was surprised so soon
01:47:36 somebody already knew, and I said yes, and then I think the
01:47:47 girlfriend was a little impatient and she started rambling
01:47:53 on about Matt Duell.

01:47:55 **Q.** So the Wednesday after the Sunday when Heidi Allen
01:47:59 came up missing --

01:48:02 **A.** Sometime after that, some day after that, before she
01:48:08 died in a motorcycle accident.

01:48:10 **Q.** And she approaches you and then two weeks later
01:48:12 she's dead on a motorcycle, is that right?

01:48:14 MR. MOODY: Judge, that assumes a lot of facts
01:48:16 not in evidence.

01:48:17 THE COURT: I'll sustain that.

01:48:20 **Q.** So she approaches you in the parking lot shortly

01:48:24 after Heidi Allen disappears?

01:48:26 **A.** Um hum.

01:48:27 **Q.** She didn't know you, is that your testimony?

01:48:29 **A.** No. Somebody directed her to me.

01:48:30 **Q.** Do you know who that somebody was?

01:48:32 **A.** No, she didn't -- I didn't really ask.

01:48:37 **Q.** Two weeks after your meeting with her she's dead on
01:48:40 a motorcycle?

01:48:41 MR. MOODY: Objection, Judge. Can we approach
01:48:43 for a second?

01:48:43 THE COURT: Yes. We don't have a date
01:48:45 certainly when this young lady passed away for one
01:48:49 thing.

01:48:50 (Whereupon, there was an off the record
01:49:22 discussion at the bench.)

01:49:22 THE COURT: Do you want to place the
01:49:23 conference on the record or not?

01:49:25 MS. PEEBLES: No, I'm fine, Judge. I don't
01:49:26 have any further questions. Thank you.

01:49:27 THE COURT: Thank you.

01:49:29 MR. MOODY: Nothing further from the People,
01:49:31 Judge.

01:49:31 THE COURT: Mr. Bohrer, you can step down,
01:49:33 sir. Thank you.

01:49:33 THE WITNESS: Thank you.

01:49:34 THE COURT: Ms. Peebles, your next witness?

01:49:36 MS. PEEBLES: Yes. We would call Danielle 01:49:38 Babcock. Judge, she's handicapped in a wheelchair so I 01:49:50 guess I should have let the Court know. She's in a 01:49:52 wheelchair.

01:50:03 THE COURT: Will counsel please approach?

(Whereupon, there was an off the record 01:50:05 discussion at the bench).

01:52:11 THE CLERK: Please raise your right hand, 01:52:14 place your left hand on the Bible.

DANIELLE BABCOCK, Called as a witness, having 01:52:19 been duly sworn, was examined and testified as follows:

01:52:19 THE CLERK: Please state and spell your name 01:52:23 for the record.

01:52:23 THE WITNESS: Danielle Babcock, 01:52:27 D-A-N-I-E-L-L-E, B-A-B-C-O-C-K.

01:52:31 THE CLERK: Thank you.

01:52:32 THE COURT: Ms. Babcock, before you go any 01:52:34 further, I'm going to ask you if you consent to have 01:52:37 your testimony either video or audio taped.

01:52:40 THE WITNESS: Yes.

01:52:40 THE COURT: You do consent?

01:52:41 THE WITNESS: Yes.

01:52:43 THE COURT: Everything we -- we have a 01:52:45 stenographer, but we also need verbal responses to

01:52:47 questions, okay?

01:52:48 THE WITNESS: Okay.

01:52:48 THE COURT: And you seem very soft spoken, so
01:52:51 make sure you speak loudly enough so the back wall can
01:52:54 hear you, okay?

01:52:55 THE WITNESS: Okay.

01:52:57 THE COURT: This is your chance to yell in
01:52:59 court, okay?

01:53:00 THE WITNESS: Okay.

DIRECT EXAMINATION
01:53:01 BY MS. PEEBLES:

01:53:02 **Q.** Danielle, how old are you?

01:53:05 **A.** Thirty.

01:53:07 **Q.** Did you grow up in the Oswego County area?

01:53:11 **A.** Yes, ma'am.

01:53:11 **Q.** Your entire life?

01:53:12 **A.** Yes, ma'am.

01:53:13 **Q.** How long have you been in a wheelchair?

01:53:16 **A.** Since 2002.

01:53:18 **Q.** And you were how old when you had your accident?

01:53:22 **A.** Seventeen going on eighteen.

01:53:24 **Q.** Before your accident were you employed?

01:53:28 **A.** Yes.

01:53:30 **Q.** Where did you work?

01:53:31 **A.** I worked at Medspars and East Coast Resorts.

01:53:38 Q. And what year was -- what year would that have been?

01:53:45 A. It was 2001/2002.

01:53:51 Q. Do you recall how old you were?

01:53:53 A. Sixteen, seventeen.

01:53:54 Q. Now who got you your job at Medspar?

01:53:58 A. Tom Martin.

01:54:00 Q. Who is Tom Martin?

01:54:00 A. He was one of my mom's boyfriends.

01:54:02 Q. And how did Tom Martin get you a job at Medspar?

01:54:06 A. He was friends with Mike Bohrer.

01:54:08 Q. Were you actually working for Medspars or were you
01:54:12 working for East Coast Resorts?

01:54:14 A. I worked for Medspars. I was telemarketing.

01:54:17 Q. And what exactly were you telemarketing?

01:54:20 A. Like it was for East Coast Resorts, but it was
01:54:28 through Medspars, and we were telemarketing like trips or,
01:54:32 you know, a campground.

01:54:35 Q. Who was your supervisor when you were working at
01:54:38 Medspars?

01:54:39 A. Mike Bohrer.

01:54:39 Q. And who paid you?

01:54:41 A. Mike Bohrer.

01:54:42 Q. Describe your work area.

01:54:45 A. Very unsanitary.

01:54:48 Q. What do you mean by that?

01:54:49 **A.** It just wasn't a work area, it was nasty, dirty.

01:54:53 **Q.** Were there other employees present when you were
01:54:56 working at Medspar?

01:54:57 **A.** Yes, ma'am.

01:54:57 **Q.** Who were they?

01:54:59 **A.** There was my sister Tanya Babcock, there was a
01:55:03 friend of mine, Alex McNab, there was another kid but I
01:55:09 don't remember his name.

01:55:10 **Q.** Was Mr. Bohrer present when you were working?

01:55:16 **A.** Yes, ma'am.

01:55:16 **Q.** And what would he be doing while you were making
01:55:18 phone calls?

01:55:18 **A.** Just walking around.

01:55:20 **Q.** How much interaction did you have with Mr. Bohrer
01:55:23 when you were working for East Coast Resorts, or Medspars,
01:55:26 I'm sorry.

01:55:27 **A.** A lot.

01:55:28 **Q.** Did he ever say anything to you that made you feel
01:55:32 uncomfortable?

01:55:33 **A.** Yes.

01:55:33 **Q.** What did he say to you?

01:55:35 **A.** He would tell us several times that he would do us
01:55:39 like he did Heidi.

01:55:41 **Q.** Do you recall the time period in which he was making
01:55:44 these comments to you?

01:55:46 **A.** What do you mean time period? Like --

01:55:48 **Q.** Was it when you -- only when you were working at Medspars?

01:55:53 **A.** Yes.

01:55:54 **Q.** Was anyone else present when he made those comments to you?

01:55:57 **A.** Alex McNab and Tanya Babcock.

01:56:03 THE COURT: Before you ask your next question, I just want to make sure we're all clear that the hearsay statements, the standing objection, the Court's going to analyze it like a suppression hearing statement, correct?

01:56:14 MS. PEEBLES: Yes. That's my understanding, Judge.

01:56:16 MR. OAKES: That's correct, Your Honor.

01:56:17 THE COURT: Okay, thank you.

01:56:19 **Q.** Did you tell anyone about the comments regarding Heidi Allen that Mr. Bohrer was making to you?

01:56:27 **A.** My mom.

01:56:28 **Q.** And what did you tell your mom?

01:56:30 **A.** I just told her that he would always threaten us like he, you know, to do us like he did Heidi.

01:56:38 **Q.** What made you quit your employment at Medspar?

01:56:40 **A.** That exactly.

01:56:41 MS. PEEBLES: No further questions.

01:56:43 THE COURT: Mr. Oakes?

01:56:52 CROSS-EXAMINATION

01:56:53 BY MR. OAKES:

01:56:53 **Q.** Good afternoon, Ms. Babcock. How long did you work
01:57:22 for Medspar?

01:57:23 **A.** Not even a year.

01:57:27 **Q.** Was it closer to say like three months, nine months,
01:57:32 do you have a ballpark estimate?

01:57:33 **A.** I would say about six to nine months.

01:57:35 **Q.** Now you said you would have a lot of contact with
01:57:39 Mr. Bohrer during that time period?

01:57:40 **A.** Yes.

01:57:41 **Q.** And I'm not trying to be rude to Mr. Bohrer, but
01:57:49 would it be fair to say that he's kind of an odd gentleman?

01:57:52 **A.** Yes.

01:57:53 **Q.** Rambles on, talks about different things a lot?

01:57:58 **A.** I don't know like about different things.

01:58:04 **Q.** Would he ramble on sometimes?

01:58:06 **A.** Just like out of nowhere? Not that I really
01:58:10 noticed.

01:58:11 **Q.** Did he ever talk to you about Heidi Allen or talk in
01:58:16 the shop that you heard about Heidi Allen?

01:58:18 **A.** Just that he would threaten us to do us as he did
01:58:22 Heidi.

01:58:22 **Q.** He never -- he never told you that he directly

01:58:31 killed Heidi Allen did he?

01:58:32 **A.** He said verbatim, "I'll do you as I did Heidi."

01:58:37 **Q.** And that bothered you obviously?

01:58:45 **A.** Yes.

01:58:45 **Q.** And you told your mom?

01:58:47 **A.** Yes.

01:58:47 **Q.** You never reported this to the police though?

01:58:52 **A.** No, we just thought it was vague threats.

01:58:54 **Q.** Okay, when you say you thought it was fake threats?

01:58:58 **A.** Vague, vague.

01:59:01 **Q.** Vague, okay. But what did you take from the vague
01:59:08 threat?

01:59:09 **A.** I -- did I think that he would honestly, you know,
01:59:12 do anything to me? No, I didn't, but did it bother me to
01:59:15 the point where I would quit my job? Yes, it did.

01:59:18 **Q.** But you didn't actually think he was going to cause
01:59:21 harm to you?

01:59:21 **A.** I -- to me personally, no. I knew that he knew my
01:59:26 entire family.

01:59:33 MR. OAKES: Your Honor, I have no further
01:59:34 questions for the witness.

01:59:35 THE COURT: Okay. Ms. Peebles, anything?

REDIRECT EXAMINATION

01:59:39 BY MS. PEEBLES:

01:59:39 **Q.** Just one question, Danielle. Why's it that you came

01:59:42 forward?

01:59:43 **A.** Honestly it was my sister and I talked and a friend
01:59:48 of hers said that her uncle is sitting in prison for a
01:59:53 crime he did not commit and anything would help.

01:59:57 **Q.** Did you want to be here today?

01:59:59 **A.** No, I didn't.

02:00:00 MS. PEEBLES: No further questions. Thank
02:00:05 you.

02:00:05 THE COURT: Mr. Oakes?

02:00:09 MR. OAKES: No further questions, Your Honor,
02:00:13 thank you.

02:00:23 THE COURT: Thank you, Ms. Babcock. Ms.
02:00:26 Peebles, your next witness?

02:00:28 MR. PEEBLES: Yes. We're going to call Joe
02:00:30 Mannino.

02:01:47 THE CLERK: Please raise your right hand,
02:01:53 place your left hand on the Bible.

JOSEPH MANNINO, Called as a witness, having
02:02:00 been duly sworn, was examined and testified as follows:

02:02:00 THE CLERK: Could you please state and spell
02:02:02 your name for the record?

02:02:04 THE WITNESS: Joseph Mannino, J-O-S-E-P-H,
02:02:06 M-A-N-N-I-N-O.

02:02:08 THE CLERK: Please be seated.

02:02:11 THE COURT: You pronounce your last name

02:02:12 Mannino?

02:02:13 THE WITNESS: Mannino, yes.

02:02:14 THE COURT: Sir, make sure you speak loudly 02:02:17 enough so the wall at the other side of the courtroom 02:02:18 will hear you. I'm going to ask you do you consent to 02:02:21 have your testimony video and audio taped?

02:02:23 THE WITNESS: No.

02:02:24 THE COURT: Okay, thank you.

02:02:26 DIRECT EXAMINATION

02:02:28 BY MS. BIANCO:

02:02:28 **Q.** Mr. Mannino, how old you?

02:02:30 **A.** Thirty-one.

02:02:30 **Q.** And what county do you reside in?

02:02:33 **A.** Oswego.

02:02:34 **Q.** How long have you lived in Oswego?

02:02:39 **A.** For about twelve years.

02:02:40 **Q.** Are you currently employed?

02:02:41 **A.** Yes.

02:02:42 **Q.** Where are you employed?

02:02:42 **A.** Dan's Chicken Shack, it's in New Haven.

02:02:47 **Q.** Is there another source of employment as well or 02:02:50 just Dan's Chicken Shack?

02:02:52 **A.** Right now just Dan's Chicken Shack.

02:02:54 **Q.** Do you do any volunteer work?

02:02:56 **A.** Oh, yeah, yeah, yeah.

02:02:58 **Q.** Where do you do volunteer work?

02:03:00 **A.** For the church.

02:03:01 **Q.** And what church is that?

02:03:02 **A.** St. Peters.

02:03:03 **Q.** What do you do there?

02:03:04 **A.** A bunch of things. Just make -- pretty much maintenance. 02:03:07

02:03:08 **Q.** And how long have you been doing volunteer work?

02:03:10 **A.** For about -- for a long time, ten years.

02:03:14 **Q.** Do you know a person by the name of James Steen?

02:03:19 **A.** Yes.

02:03:19 **Q.** And does he have a nickname?

02:03:21 **A.** Thumper.

02:03:22 **Q.** And how long have you known Mr. Steen?

02:03:27 **A.** For about ten years.

02:03:29 **Q.** How would you describe your relationship with Mr. Steen? 02:03:33

02:03:33 **A.** We were friends.

02:03:35 **Q.** Do you know if Mr. Steen was a drug user?

02:03:41 **A.** Yeah.

02:03:42 **Q.** How do you know?

02:03:44 MR. OAKES: Objection, Your Honor. What time frame are we talking about? 02:03:46

02:03:49 THE COURT: Can you give us a time frame?

02:03:52 MS. BIANCO: Certainly.

02:03:52 **Q.** You've known him for ten years?

02:03:53 **A.** Yes.

02:03:54 **Q.** When was the first time if you know that he was a 02:03:57 drug user and when was that?

02:03:58 MR. OAKES: Objection, Your Honor. Relevance. 02:04:00 Ten years puts him back to 2004, ten years after the --

02:04:05 THE COURT: What's the relevance?

02:04:06 MS. BIANCO: Well, this is how they knew one 02:04:08 another as well, Judge.

02:04:13 THE COURT: I'll allow it.

02:04:17 **A.** There's drugs involved the first time I met him.

02:04:20 **Q.** What kind of drugs?

02:04:21 **A.** Cocaine.

02:04:23 **Q.** Did there come a time in 2011 when you were 02:04:31 incarcerated in the Oswego County Jail?

02:04:36 **A.** Excuse me?

02:04:37 **Q.** Did there come a time in 2011 when you were 02:04:40 incarcerated in the Oswego County Jail?

02:04:44 **A.** Yeah, I was incarcerated.

02:04:46 **Q.** Why were you there?

02:04:47 **A.** I was there on a domestic violence case.

02:04:49 **Q.** And did you see James Steen while you were 02:04:53 incarcerated?

02:04:53 **A.** Yes.

02:04:54 **Q.** Where was he housed?

02:04:56 **A.** Right next door to me.

02:04:57 **Q.** And what was he doing there if you know?

02:05:01 **A.** He was going to trial for murder.

02:05:03 **Q.** For -- for what?

02:05:04 **A.** Murder.

02:05:05 **Q.** Did Mr. Steen have a conversation with you while he
02:05:14 was in the jail about Heidi Allen?

02:05:17 **A.** Yes.

02:05:18 **Q.** How did that conversation come up?

02:05:21 **A.** We were -- we were talking about me working for Matt
02:05:26 Duell and then I had brought up I'd always heard that Matt
02:05:32 was a suspect in what happened to her.

02:05:35 **Q.** What happened to her, who her?

02:05:38 **A.** Heidi.

02:05:39 **Q.** Okay.

02:05:39 **A.** And he -- that's -- that's how the conversation
02:05:43 started.

02:05:44 **Q.** And what did he say in regards to Ms. Allen?

02:05:47 **A.** He said that Matt didn't have nothing to do with it.

02:05:50 **Q.** Did he say anything else?

02:05:51 **A.** Yeah. He said that the Thibodeaus didn't have
02:05:56 nothing to do with it, and the actual -- his own words was
02:06:00 the actual van that was used in her kidnapping, he's the
02:06:04 one that hauled it to Canada and had it scrapped.

02:06:08 **Q.** Did he say anything about her status as an

02:06:11 informant?

02:06:12 **A.** He said she was a rat.

02:06:15 **Q.** When was the first time you disclosed these
02:06:21 statements that Steen made to law enforcement?

02:06:24 **A.** I don't remember the date.

02:06:28 **Q.** What year was it if you know?

02:06:30 **A.** 2014.

02:06:31 **Q.** And who was the first agency you contacted regarding
02:06:36 Mr. Steen's statements?

02:06:37 **A.** The first agency I contacted was Oswego City Police
02:06:41 Department and I didn't hear nothing back from them.

02:06:43 **Q.** What did you do then?

02:06:44 **A.** Then I had called my -- I called my parole officer
02:06:50 and I didn't hear nothing back from him either.

02:06:52 **Q.** What did you do after that?

02:06:54 **A.** I called the District Attorney's Office.

02:06:56 **Q.** And who did you speak to?

02:06:59 **A.** I believe it was Mr. Moody.

02:07:02 **Q.** Okay, and did you provide an affidavit to the
02:07:06 District Attorney's Office?

02:07:08 **A.** Yes.

02:07:09 **Q.** About these statements that Mr. Steen made?

02:07:11 **A.** Yes.

02:07:12 **Q.** What were you asked in regards to taking a polygraph
02:07:17 test?

02:07:17 **A.** Nothing.

02:07:18 MR. OAKES: Objection, Your Honor.

02:07:19 THE COURT: Hold on. What's your objection?

02:07:21 MR. OAKES: Objection, Your Honor, relevance.
02:07:23 Polygraph's inadmissible in court.

02:07:25 THE COURT: I'll sustain.

02:07:26 **Q.** After you contacted the District Attorney's Office
02:07:32 about Mr. Steen's statement, what did you do?

02:07:37 **A.** I -- I contacted Lisa Peebles.

02:07:45 **Q.** Why didn't you report what Mr. Steen said when he
02:07:49 first said this to you in the jail?

02:07:53 **A.** He -- he didn't say that he did a crime, he didn't,
02:07:58 I didn't feel like there was nothing for me to report.

02:08:01 **Q.** Okay, because he told you what?

02:08:03 **A.** He said that he -- that the van that was used in it,
02:08:06 he had hauled it and scrapped it to Canada.

02:08:10 **Q.** Do you know Gary Thibodeau?

02:08:12 **A.** No.

02:08:13 **Q.** How about Richard Thibodeau?

02:08:15 **A.** I don't know him.

02:08:18 **Q.** Do you know Jen Wescott?

02:08:21 **A.** I know of her.

02:08:22 **Q.** How about Amanda Braley?

02:08:24 **A.** No.

02:08:27 **Q.** What do you hope to gain by testifying here today?

02:08:31 **A.** Nothing.

02:08:32 **Q.** Have you gotten any grief since you've given these
02:08:36 statements against Mr. Steen?

02:08:38 MR. OAKES: Objection, Your Honor.

02:08:39 **A.** Yes.

02:08:40 THE COURT: What's your objection?

02:08:41 MR. OAKES: Relevance.

02:08:42 THE COURT: Sustained.

02:08:48 MS. BIANCO: I have no further questions.

02:08:50 THE COURT: Okay, thank you. This might be a
02:08:55 good time to take about a ten-minute break. You said
02:08:58 your cross would be a little longer? It's ten after
02:09:01 right now. Why don't we go until twenty after, that
02:09:04 gives us a good hour and a half. You can step down,
02:09:08 sir. Court's in recess until twenty after two.

02:09:16 (Whereupon, there was a recess.)

02:21:26 THE COURT: Do you want to get Mr. Mannino?
02:21:40 Ms. Peebles, do you have enough -- why don't you guys
02:21:43 approach?

02:21:44 (Whereupon, there was an off the record
02:22:35 discussion at the bench.)

02:22:35 THE COURT: Mr. Oakes.

02:22:36 MR. OAKES: Thank you.

(People's Exhibit J was marked for
identification).

02:22:40 CROSS-EXAMINATION
02:22:40 BY MR. OAKES:
02:23:51 **Q.** Good afternoon, Mr. Mannino.
02:23:58 **A.** Good afternoon.
02:24:00 **Q.** Now, you were incarcerated in the Oswego County Jail
02:24:04 in 2011?
02:24:05 **A.** Yes, sir.
02:24:06 **Q.** What months in 2011?
02:24:09 **A.** From January till September.
02:24:14 **Q.** Why were you in the Oswego County Jail at that time?
02:24:18 **A.** Domestic violence.
02:24:20 **Q.** Against whom?
02:24:24 **A.** My girlfriend.
02:24:26 **Q.** What did you do to her?
02:24:30 MS. BIANCO: Objection to the relevance of
02:24:32 what he did to her, Your Honor.
02:24:34 THE COURT: I'll sustain. If you want to ask
02:24:36 him what he was convicted of, that's fine.
02:24:37 **Q.** What were you convicted of?
02:24:39 **A.** Violating order of protection.
02:24:41 **Q.** Now, your testimony to Ms. Peebles, you said you
02:24:53 were talking to Mr. -- Mr. Steen in the Oswego County Jail
02:24:58 during that period of time?
02:24:59 **A.** Yes, sir.
02:25:00 **Q.** Do you recall what month or what day that you were

02:25:03 speaking to Mr. Steen?

02:25:05 **A.** No, I don't.

02:25:10 **Q.** And your testimony is that Mr. Steen told you that 02:25:18 the van that was used in the Heidi Allen abduction was 02:25:24 scrapped and he had taken it to Canada?

02:25:26 **A.** Yes.

02:25:27 **Q.** That's what he told you?

02:25:28 **A.** Yes.

02:25:28 **Q.** Did he say where it was scrapped?

02:25:33 **A.** He told me it was across the border in Canada.

02:25:36 **Q.** He told you where it was taken to, correct?

02:25:39 **A.** Yes.

02:25:39 **Q.** He didn't say anything about Murtaugh's scrap yard, 02:25:44 correct?

02:25:44 **A.** No, sir.

02:25:45 **Q.** Did he tell you -- did he say anything about Roger 02:25:49 Breckenridge?

02:25:50 **A.** No, sir.

02:25:51 **Q.** Did he say anything to you about Michael Bohrer?

02:25:54 **A.** No, sir.

02:25:54 **Q.** Did he tell you that he abducted Heidi Allen?

02:25:59 **A.** No, sir.

02:26:00 **Q.** Did he tell you that he killed Heidi Allen?

02:26:03 **A.** No, sir.

02:26:07 **Q.** And he said -- when he told you about the van being

02:26:11 taken to Canada, did he explain to you how he knew it was the van that was involved with Heidi Allen?

02:26:17 **A.** No, he didn't, sir.

02:26:18 **Q.** So you don't know if it was something he actually knew or something he was speculating about, is that fair to say?

02:26:27 **A.** Yeah.

02:26:33 **Q.** And it's your testimony today that she told that -- it's your testimony today that Mr. Steen told you the reason she was killed, Heidi Allen was killed, is because she was a rat?

02:26:59 **A.** Yes.

02:27:00 **Q.** And he told you that the Thibodeaus had nothing to do with it?

02:27:04 **A.** Yes.

02:27:06 **Q.** Mr. Mannino, on July twenty-eighth, 2014, you gave a sworn affidavit to the Federal Public Defender's Office didn't you?

02:27:19 **A.** Yes.

02:27:19 THE COURT: What's the date, Mr. Oakes?

02:27:20 MR. OAKES: July twenty-eighth of 2014.

02:27:23 THE COURT: Thank you.

02:27:24 **Q.** And it was in reference to this case and this hearing essentially, correct?

02:27:29 **A.** Yes.

02:27:30 **Q.** And did you speak with Attorney Lisa Peebles at that
02:27:35 time?

02:27:35 **A.** Yes.

02:27:36 **Q.** Where did you meet her?

02:27:37 **A.** At her office.

02:27:38 **Q.** Down in Syracuse, the Federal Public Defender's
02:27:42 Office?

02:27:42 **A.** Yes.

02:27:42 **Q.** And you knew that was an important matter at that
02:27:47 time?

02:27:47 **A.** Yes, I did.

02:27:48 **Q.** And I'm sure -- did Ms. Peebles ask you to tell
02:27:52 you -- tell her everything that Mr. Steen had told you?

02:27:56 **A.** Yes.

02:27:56 **Q.** She told you this was an important case and she
02:27:59 wanted you to be thorough?

02:28:00 **A.** No.

02:28:01 **Q.** Okay.

02:28:02 **A.** Well, I don't -- I don't understand your question.

02:28:06 **Q.** That's fine, Mr. Mannino. Mr. Mannino, did she ask
02:28:11 you to tell her everything that James Steen told you in the
02:28:14 jail?

02:28:16 **A.** I told her everything he told me in the jail. On my
02:28:21 own.

02:28:22 **Q.** Okay, and then somebody in her office or she typed

02:28:27 up a statement for you?

02:28:29 **A.** Yeah.

02:28:30 **Q.** Do you read and write English, Mr. Mannino?

02:28:33 **A.** Yes, I do.

02:28:34 **Q.** Did you review that statement when -- when they
02:28:38 typed it up for you?

02:28:39 **A.** Yes, I did.

02:28:40 **Q.** And you read it before you signed it?

02:28:42 **A.** Yes, I did.

02:28:43 **Q.** And in that statement did you put all of the
02:28:45 information that you had regarding James Steen and Heidi
02:28:49 Allen?

02:28:59 MS. PEEBLES: Why doesn't he let him see the
02:29:00 document?

02:29:01 MR. OAKES: Well, I'm asking him if he put
02:29:03 everything that he knew in the statement.

02:29:05 THE COURT: He didn't answer that he doesn't
02:29:09 remember at this point.

02:29:09 **A.** At this point I don't remember. I don't remember
02:29:13 what was in the statement.

02:29:14 **Q.** Okay, did you know it was important to be honest at
02:29:17 that time?

02:29:17 **A.** I have been honest this whole time.

02:29:19 **Q.** No. At the time that you gave the statement, did
02:29:20 you know it was important to be honest?

02:29:22 **A.** Yes, I did.

02:29:23 **Q.** Did you know it was important to be complete, to tell everything?

02:29:29 **A.** Yes.

02:29:30 **Q.** Okay. Now, when you gave this statement to Ms. Peebles though, you never mentioned anything about James Steen saying that Heidi was a rat did you?

02:29:47 **A.** I've told everybody from the jump he said that.

02:29:51 **Q.** Okay, well, I'm going to hand you what's been marked for identification as People's J. Do you recognize that, Mr. Mannino?

02:30:01 **A.** Yeah.

02:30:03 **Q.** Is that the statement that you gave to Ms. Peebles?

02:30:16 (Whereupon, there was a pause in the proceeding.)

02:30:26 **Q.** Is that the statement that you gave Ms. Peebles, sir?

02:30:29 THE COURT: Hold on. He's looking at it.

02:30:31 MR. OAKES: Oh, I'm sorry, Your Honor.

02:31:20 **A.** This doesn't look like -- I think there's a typo in this.

02:31:26 **Q.** Okay, is that your signature at the bottom?

02:31:29 **A.** Yes, it is.

02:31:32 **Q.** Is there a notary stamp to the left of that?

02:31:37 **A.** Yes, there is.

02:31:38 **Q.** And Ms. Peebles, who is sitting there at the table with the glasses, did she sign that or notarize that statement that is in front of you? The young lady right here?

02:31:50 **A.** Yes.

02:31:51 **Q.** Okay. Can you tell me where in that statement it says --

02:31:57 MS. BIANCO: Your Honor, I'm going to object. That is an attempt to argue that this is somehow a recent fabrication, when he gave the statement to them, and these very words are to them in their statement, so these are improper.

02:32:09 THE COURT: I don't think it's an attempt to say this is a recent fabrication. I'm going to allow the line.

02:32:16 **Q.** Did you say anywhere in that statement Mr. Steen told you Heidi Allen was a rat?

02:32:22 **A.** I don't see it in there.

02:32:24 **Q.** Okay. Actually I'm going to ask you to hang on to that, Mr. Mannino. You testified today James Steen specifically told you that the Thibodeaus had nothing to do with Heidi Allen's abduction and death?

02:32:40 **A.** Yes, he did.

02:32:41 **Q.** Okay, I'm going to ask you to look at the fifth paragraph of that affidavit, the sworn affidavit you gave

02:32:48 to the defense counsel. Do you see that fifth paragraph?
02:32:53 In the second to last sentence, does it say, "Thumper never
02:32:58 mentioned the Thibodeaus when he made the statement about
02:33:02 squashing the van." Did he say -- is that in your
02:33:05 statement, sir?

02:33:09 **A.** Yeah.

02:33:11 **Q.** And that's what you swore to under oath when you
02:33:13 gave that affidavit to defense counsel.

02:33:16 **A.** Yeah.

02:33:18 **Q.** Is it still your testimony today that he mentioned
02:33:22 the Thibodeaus and said they weren't involved?

02:33:24 **A.** Yes, it is.

02:33:27 **Q.** You lived in Oswego County your entire life?

02:33:33 **A.** No, I haven't.

02:33:33 **Q.** How long have you lived in Oswego County?

02:33:35 **A.** For about twelve years.

02:33:37 **Q.** Okay, you've heard of the Heidi Allen case before
02:33:42 recently?

02:33:42 **A.** Yes.

02:33:43 **Q.** You were aware of the significance of that case in
02:33:46 the community?

02:33:47 **A.** Yes.

02:33:49 **Q.** And would you agree that Mr. Steen's statements to
02:33:55 you were -- alleged statements to you in the jail are
02:33:57 significant regarding Heidi Allen case?

02:34:01 **A.** Yes.

02:34:03 **Q.** And that was in 2011 that he made those statements
02:34:06 to you, correct?

02:34:06 **A.** Yes.

02:34:07 **Q.** You've since that time -- rephrase that. So in July
02:34:16 of 2014, you came forward to talk about these statements
02:34:22 that you heard from Mr. Steen, correct?

02:34:24 **A.** Yes.

02:34:25 **Q.** You've had opportunities before July of 2014 to
02:34:29 advise law enforcement of those statements though haven't
02:34:32 you?

02:34:33 **A.** Yes.

02:34:35 **Q.** And in fact, in May of 2012, a search warrant was
02:34:52 executed at your residence in the City of Oswego?

02:34:55 **A.** Yes.

02:34:55 **Q.** By the City of Oswego Police Department?

02:34:57 **A.** Yes.

02:34:58 **Q.** And one of the officers involved in that case was
02:35:00 Sergeant Aldo Bonacchi of the Oswego Police Department,
02:35:04 correct?

02:35:04 **A.** Yes.

02:35:05 **Q.** And you're familiar with Sergeant Bonacchi?

02:35:08 **A.** Yes.

02:35:09 **Q.** And after you got arrested on that charge -- well,
02:35:12 you were arrested at that time for criminal possession of a

02:35:15 controlled substance in the seventh degree weren't you?

02:35:17 **A.** No, I wasn't.

02:35:19 **Q.** Let me ask you, did you think you were going to be
02:35:22 charged with criminal possession of a controlled substance
02:35:25 in the seventh degree?

02:35:25 **A.** Yes.

02:35:26 **Q.** And did you tell Sergeant Bonacchi, look, I know
02:35:31 Judge Metcalf will give me a year if I go in front of him
02:35:35 or words to that effect?

02:35:36 **A.** Yeah.

02:35:37 **Q.** And you wanted to try to do some work for the city
02:35:41 of Oswego ACT Team, their drug task force team, to avoid
02:35:45 being charged.

02:35:46 **A.** No.

02:35:47 **Q.** Correct? Well, didn't you do a debriefing with
02:35:51 Sergeant Bonacchi in May of 2012 at that time?

02:35:56 **A.** I never ended up doing nothing for Bonacchi.

02:35:59 **Q.** Let me ask you, my question isn't whether you
02:36:08 actually did something for Sergeant Bonacchi, but did you
02:36:13 sign up to act as a confidential informant for him?

02:36:15 **A.** No.

02:36:16 **Q.** In August ninth of 2012, did you meet with Sergeant
02:36:27 Bonacchi during that time period?

02:36:30 **A.** I was arrested.

02:36:33 **Q.** And you were going to be charged with felony weight

02:36:37 for drug sales, correct?
02:36:39 **A.** I was charged.
02:36:40 **Q.** And at that time, did you speak with Sergeant
02:36:45 Bonacchi about whether you had information that you could
02:36:47 give that might be able to help you with your case?
02:36:51 **A.** Yeah, he -- yeah.
02:36:53 **Q.** Now, Sergeant Bonacchi, when he does a debriefing
02:36:58 like that, he'll generally tell you look, if you --
02:37:00 MS. BIANCO: Object to what Sergeant Bonacchi
02:37:03 generally does.
02:37:04 THE COURT: Sustained.
02:37:05 **Q.** Okay, did Sergeant Bonacchi tell you look, Joe, if
02:37:09 you got any information on any major crimes, doesn't have
02:37:12 to be drug related, any crimes, we're willing to work with
02:37:16 you or we'll listen to you. Did he tell you that?
02:37:18 **A.** He always says that.
02:37:19 **Q.** Okay, basically sometimes does he -- well, let me
02:37:23 ask you in your case, does he say look, if there's any
02:37:26 bodies, any major crime --
02:37:28 MS. BIANCO: Objection to sometimes. If we
02:37:30 can get a specific date.
02:37:31 THE COURT: No, no, he's talking of general
02:37:34 procedures that Sergeant Bonacchi engages in. I'm
02:37:37 going to allow it.
02:37:38 **Q.** Did he ask you that?

02:37:39 **A.** Yes.

02:37:40 **Q.** Okay, did you tell him at that time look, I have information regarding the Heidi Allen case?

02:37:48 **A.** No.

02:37:50 **Q.** Did you tell him at that time look, this guy James Steen told me he scrapped the van that Heidi Allen was in. Did you tell him that?

02:38:00 **A.** I didn't believe a crime was committed. I -- what do I tell?

02:38:04 **Q.** Okay, based upon what Mr. Steen told you, you didn't think he committed any crime?

02:38:09 **A.** No, I didn't. At the time no, I didn't.

02:38:12 **Q.** Well, let me ask you, he told you he scrapped the van that had Heidi Allen in it, that's your testimony?

02:38:18 **A.** No. He told me that he scrapped the van that was used in her abduction.

02:38:23 **Q.** Okay. Now Mr. Mannino, in October ninth of 2012, were you convicted of criminal tampering in the third degree in Oswego City Court?

02:38:42 **A.** Yes.

02:38:43 **Q.** And in October twelfth, three days later, October twelfth of 2012, were you convicted of criminal possession of a controlled substance in the fifth degree in Oswego County Court?

02:39:00 **A.** Yes.

02:39:00 **Q.** And that was for possession of cocaine with the
02:39:04 intent to sell.

02:39:07 **A.** That was possession of crack.

02:39:09 **Q.** Crack cocaine?

02:39:12 **A.** Yes.

02:39:14 **Q.** With the intent to sell.

02:39:15 **A.** Yes.

02:39:16 **Q.** And in March ninth of 2011, you were convicted of
02:39:24 endangering the welfare of a child in Oswego City Court?

02:39:25 **A.** Yes.

02:39:26 THE COURT: What's the date of this, Mr.
02:39:27 Oakes?

02:39:27 MR. OAKES: March ninth of 2011, Your Honor.

02:39:31 THE COURT: Okay.

02:39:32 **Q.** And on February first of 2011, were you convicted of
02:39:38 criminal contempt in the second degree?

02:39:40 **A.** Yes.

02:39:41 **Q.** In Oswego City Court?

02:39:43 **A.** Yes.

02:39:43 **Q.** That was for violating an order of protection.

02:39:46 **A.** Yes.

02:39:46 **Q.** And on that same date, February first of 2011, were
02:39:52 you convicted of assault in the third degree in Oswego City
02:39:56 Court?

02:39:59 **A.** Yes.

02:40:00 **Q.** And that was related to the same incident where you violated the order of protection wasn't it?

02:40:05 **A.** Yes.

02:40:06 **Q.** And on June twenty-fourth of 2010, you were convicted of criminal mischief in the fourth degree in Oswego City Court?

02:40:15 **A.** Yes.

02:40:16 **Q.** And in August fourth of 2007, you were convicted of assault in the third degree in Oswego City Court.

02:40:25 **A.** Yes.

02:40:26 **Q.** On January sixteenth of 2007, were you convicted of endangering the welfare of a child in Oswego City Court?

02:40:36 **A.** I don't remember.

02:40:39 **Q.** Let me ask you in January of 2007, were you charged with gang assault in the second degree in Oswego City Court?

02:41:03 **A.** Yes.

02:41:04 **Q.** And did you plead that down to assault in the third degree?

02:41:07 MS. BIANCO: Objection to what was pled down. What he was originally charged with, what he's originally charged with is not relevant, just what he's convicted of.

02:41:15 MR. OAKES: Trying to refresh his recollection. He said he didn't remember, Your Honor.

02:41:18 THE COURT: I'll allow the question.

02:41:21 **A.** Yes.

02:41:23 **Q.** January sixteenth of 2007, were you convicted of
02:41:30 endangering the welfare of a child?

02:41:33 **A.** Yes.

02:41:33 **Q.** March twenty-third of 2004, convicted of criminal
02:41:37 contempt in the second degree in Oswego City Court?

02:41:41 **A.** Yes.

02:41:41 **Q.** For violating an order of protection?

02:41:44 **A.** Yes.

02:41:46 **Q.** September twenty-eighth of 2002, you were convicted
02:41:50 of endangering the welfare of a child?

02:41:52 **A.** Yes.

02:41:53 **Q.** Cicero Town Court. And December eleventh, 2001,
02:42:01 convicted of assault in the third degree in Cicero Town
02:42:04 Court?

02:42:05 **A.** Yes.

02:42:06 **Q.** That community service that you talked about Ms.
02:42:10 Bianco, is that court ordered by any chance?

02:42:13 **A.** No, sir.

02:42:15 MR. OAKES: Okay, no further questions, Your
02:42:17 Honor.

02:42:21 THE COURT: I think you mischaracterized it.
02:42:24 He said volunteer work, he didn't say community
02:42:26 service.

02:42:26 MR. OAKES: Okay, my apologies.

02:42:28 THE COURT: That's all right. Give me a
02:42:30 second, Ms. Bianco.

02:42:31 MS. BIANCO: Certainly, Judge. I have to get
02:42:33 the mike any way.

02:42:34 THE COURT: Okay.

02:42:34 (Whereupon, there was a pause in the
02:42:57 proceeding.)

02:42:57 THE COURT: Ms. Bianco.

02:42:59 MS. BIANCO: Thank you, Your Honor.

02:43:00 REDIRECT EXAMINATION

02:43:00 BY MS. BIANCO:

02:43:02 **Q.** Mr. Mannino, the prosecutor brought out a number of
02:43:06 criminal convictions, is that right?

02:43:08 **A.** Yes.

02:43:09 **Q.** Yet who is the first agency you actually spoke with
02:43:13 to report the admissions Steen made to you?

02:43:18 MR. OAKES: Objection, Your Honor. Beyond the
02:43:20 scope of cross. Didn't ask anything about --

02:43:24 THE COURT: Sustained. Never asked anything
02:43:26 about the disclosure.

02:43:27 MS. BIANCO: Pardon me, Judge?

02:43:28 THE COURT: Never asked anything about the
02:43:29 disclosure.

02:43:31 **Q.** Mr. Oakes asked you if you gave a statement to the

02:43:38 defense, do you remember those questions?

02:43:40 **A.** Yes.

02:43:40 **Q.** Did you also give a statement to the prosecution?

02:43:44 **A.** Yes.

02:43:45 **Q.** And was that on July thirty-first, 2014?

02:43:50 **A.** Yes.

02:43:51 **Q.** And was that the first time you talked to the
02:43:54 prosecutor about what you knew?

02:43:56 **A.** No.

02:43:57 MR. OAKES: Objection, Your Honor. Again,
02:43:58 beyond the scope of cross. Never asked about any
02:44:01 conversations with the prosecutors.

02:44:02 THE COURT: Sustained.

02:44:04 **Q.** When you spoke with the prosecutor on July
02:44:08 thirty-first, 2014, who did you speak to?

02:44:12 MR. OAKES: Objection. Same objection, Your
02:44:14 Honor.

02:44:14 MS. BIANCO: Judge, this --

02:44:15 MR. OAKES: Beyond the scope.

02:44:16 THE COURT: He never asked any questions about
02:44:18 any statement given to the DA's Office. You did.

02:44:21 MS. BIANCO: He's trying to impeach him by
02:44:23 saying he didn't come forward with any information
02:44:24 about Ms. Allen being an informant when he knows full
02:44:27 well he did to them.

02:44:28 THE COURT: He never asked any questions about that. You had the opportunity to discuss that objection.

02:44:33 MS. BIANCO: He opened the door, Judge.

02:44:36 THE COURT: Sustained.

02:44:38 **Q.** When he asked you questions about whether or not you ever told anyone, or specifically the defense, that James Steen said Heidi Allen was a rat, have you ever told anyone that she was a rat since coming forward?

02:44:55 MR. OAKES: Objection, Your Honor. I asked what he told defense counsel, not anybody else, and she's trying to bolster her -- the witness's testimony.

02:45:03 MS. BIANCO: He's trying to mischaracterize the witness's testimony as a recent fabrication when he knows it's not.

02:45:09 THE COURT: I'm going to -- I believe you did, in fact, did ask the Heidi Allen is a rat question, Mr. Oakes. I'm going to allow it.

02:45:18 **Q.** Did you tell anyone about James Steen's admissions to you that Heidi Allen was a rat?

02:45:25 **A.** Yes.

02:45:26 **Q.** Who did you tell?

02:45:27 **A.** I told district attorney, I told Lisa.

02:45:32 **Q.** So this wasn't the first time you're mentioning it here today in court is it?

02:45:37 **A.** No, ma'am.

02:45:37 **Q.** And why exactly did you come forward with the Steen
02:45:42 admission testimony? Why did you come forward at all?

02:45:46 **A.** When Steen told me about it, I'd always known him as
02:45:53 a scrapper, he had his own flat, his own flatbeds. I
02:45:58 didn't know if he'd bidded on a job when the police, when
02:46:01 the DA, was done with it, you know, I didn't know. I'm
02:46:04 assuming like he got -- he got it legitimately through his
02:46:08 business, he got -- they auctioned it off, he got it and he
02:46:11 scrapped it. Once everything came to light about -- about
02:46:16 what's going on, that's -- that's why I came forward,
02:46:19 that's the first time I didn't think no, he didn't tell me
02:46:22 he killed her, he didn't -- he wasn't saying nothing like
02:46:25 that.

02:46:25 **Q.** When you say when everything came to light, when was
02:46:28 that that things came to light that you found that?

02:46:31 **A.** It was -- it was a Thursday afternoon, I -- I got
02:46:34 done working, I got on my Facebook, there was a link
02:46:39 stating that Roger Breckenridge and two other men are
02:46:44 possibly suspects in the Heidi Allen case. As soon as I
02:46:48 seen the name Roger Breckenridge and two other men, I've
02:46:51 always known Thumper and Roger to be friends, it just
02:46:54 clicked in me, that's when I knew I need to tell somebody
02:46:58 something.

02:46:59 **Q.** And who was the first person you called, first

02:47:02 agency you called?

02:47:02 **A.** Oswego City Police.

02:47:05 MS. BIANCO: Thank you. No further questions.

02:47:08 THE COURT: Just a second, Mr. Oakes.

02:47:13 (Whereupon, there was a pause in the
02:47:18 proceeding.)

02:47:18 THE COURT: Go ahead, Mr. Oakes, when you're
02:47:20 ready, sir.

02:47:20 MR. OAKES: Thank you.

02:47:23 RECROSS-EXAMINATION

02:47:23 BY MR. OAKES:

02:47:24 **Q.** Is that statement still in front of you, Mr.
02:47:37 Mannino? Maybe I -- Mr. Mannino, you said you saw a
02:47:42 newspaper article, there was a link on Facebook?

02:47:45 **A.** Yes, sir.

02:47:46 **Q.** Would that have been the July twenty-fourth, 2014
02:47:50 article by John O'Brien, the Post-Standard, it was a
02:47:53 Thursday if that helps you?

02:47:54 **A.** It was a Thursday, I don't know the date.

02:47:56 **Q.** Okay, and so a few days later on July twenty-eighth
02:48:01 you met with Ms. Peebles at her office because --

02:48:05 **A.** Yes.

02:48:05 **Q.** -- everything clicked for you?

02:48:06 **A.** Yes.

02:48:07 **Q.** And it's your testimony you told Ms. Peebles Mr.

02:48:11 Steen told you about Heidi Allen being a rat?

02:48:13 **A.** Yes.

02:48:15 **Q.** It's your testimony you told Ms. Peebles that and
02:48:18 she simply didn't put it in your statement?

02:48:20 MS. BIANCO: Objection to what Ms. Peebles did
02:48:22 or didn't do.

02:48:23 THE COURT: Sustained.

02:48:24 **Q.** You told defense counsel that James Steen said Heidi
02:48:32 was a rat?

02:48:33 MS. BIANCO: Objection. Asked and answered.

02:48:36 MR. OAKES: Okay, that's fine. I'll withdraw,
02:48:38 Your Honor.

02:48:38 THE COURT: That's sustained.

02:48:39 **Q.** Do you think that statement by Mr. Steen was
02:48:44 important?

02:48:45 MS. BIANCO: Objection to what he thought
02:48:46 about Mr. Steen and it's importance.

02:48:49 THE COURT: He's already testified to it. I'm
02:48:51 going to allow it. There was no objection previously.
02:48:53 I'm going to allow it.

02:48:55 **Q.** Do you think that comment about Heidi Allen being a
02:48:57 rat is important?

02:49:00 **A.** When I look at it now, yes.

02:49:03 **Q.** But it's not in the statement that you gave to
02:49:06 defense counsel --

02:49:07 MS. BIANCO: Objection. Asked and answered.

02:49:09 **Q.** -- when you first gave a statement.

02:49:11 MS. BIANCO: Several times.

02:49:12 THE COURT: Sustained.

02:49:14 MR. OAKES: No further questions, Your Honor.

02:49:15 THE COURT: Ms. Bianco, anything?

02:49:17 MS. BIANCO: No further questions.

02:49:19 THE COURT: Mr. Mannino, you can step down,
02:49:21 sir. Ms. Bianco?

02:49:29 MS. BIANCO: Amanda Braley, Your Honor.

02:49:31 THE COURT: Amanda Braley.

02:49:33 MS. BIANCO: Yes.

02:49:33 THE COURT: Will we be done with her by four?

02:49:40 MS. PEEBLES: I would think so, Judge.

02:50:13 THE CLERK: Please raise your right hand,
02:50:16 place your left hand over the Bible.

AMANDA BRALEY, Called as a witness, having been
02:50:22 duly sworn, was examined and testified as follows:

02:50:22 THE CLERK: Could you please state and spell
02:50:24 your first and last name for the record?

02:50:26 THE WITNESS: Amanda Braley. My last name is
02:50:28 B-R-A-L-E-Y.

02:50:30 THE CLERK: Please be seated.

02:50:32 THE COURT: Ms. Braley, before we go any
02:50:34 further, I'm going to ask you whether or not you

02:50:36 consent to having your testimony video and audio taped.

02:50:40 THE WITNESS: No.

02:50:41 THE COURT: No, okay.

02:50:42 THE WITNESS: I don't want it.

02:50:43 THE COURT: Okay, thank you. Make sure you
02:50:44 keep your voice up too.

02:50:45 THE WITNESS: Okay. Yep.

02:50:47 DIRECT EXAMINATION

BY MS. BIANCO:

02:50:48 **Q.** Good afternoon, Ms. Braley.

02:50:49 **A.** Hi.

02:50:49 **Q.** How old are you?

02:50:50 **A.** Thirty-one.

02:50:51 **Q.** And what county do you currently reside in?

02:50:53 **A.** Onondaga.

02:50:54 **Q.** Have you ever lived in Oswego?

02:50:56 **A.** Yep.

02:50:57 **Q.** And when was that?

02:50:58 **A.** Probably until 2007.

02:51:02 **Q.** So how long -- how many years do you think you lived
02:51:04 in Oswego?

02:51:05 **A.** Twenty-three.

02:51:08 **Q.** Do you know a person by the name of Jennifer
02:51:12 Wescott?

02:51:13 **A.** Yeah.

02:51:14 **Q.** How long have you known her?

02:51:16 **A.** Since 2000, 1999 I would say.

02:51:21 **Q.** Can you describe your relationship with her at -- in 2000, excuse me, 1999?

02:51:28 **A.** She was more of an acquaintance type. The girl that I was dating at the time was friends with her and her family.

02:51:36 **Q.** How often would you see Ms. Wescott?

02:51:40 **A.** At least two to three times a week maybe.

02:51:45 **Q.** Over how many -- over how long a period of time from 1999 until what year approximately?

02:51:51 **A.** Probably 2005.

02:51:55 **Q.** Do you know a person by the name of Roger Breckenridge?

02:51:58 **A.** Yes.

02:51:59 **Q.** And how long have you known him?

02:52:01 **A.** The same as Jen.

02:52:03 **Q.** And describe your relation -- would that be 1999 to 2005?

02:52:08 **A.** Yes.

02:52:08 **Q.** Describe your relationship with Roger Breckenridge during those years.

02:52:13 **A.** More of an acquaintance as well.

02:52:16 **Q.** And how often would you see Roger Breckenridge?

02:52:19 **A.** Every time I seen Jen usually they were together.

02:52:22 **Q.** Do you know a person named James Steen?

02:52:25 **A.** Yes.

02:52:25 **Q.** And how long have you known him?

02:52:27 **A.** Not as long. I met him through Jen and Roger.

02:52:33 **Q.** Approximately what year do you think you met James
02:52:36 Steen?

02:52:36 **A.** Maybe 2002.

02:52:40 **Q.** And how often would you see him?

02:52:42 **A.** Maybe once or twice a month.

02:52:46 **Q.** Did there come a time when you lived on County Route
02:52:51 38 in Hastings?

02:52:51 **A.** Yes.

02:52:52 **Q.** And when was that?

02:52:54 **A.** I would say 2001 or 2003.

02:53:00 **Q.** And who did you live there with?

02:53:02 MR. OAKES: Excuse me, Your Honor, I
02:53:04 apologize. Maybe I misheard. Was that 2001 or 2003 or
02:53:07 through 2003? I didn't hear.

02:53:09 THE COURT: When did you live at County Route
02:53:12 38 in Hastings?

02:53:12 THE WITNESS: Probably around 2002 or 2003.

02:53:15 MR. OAKES: Okay.

02:53:17 **Q.** And who did you live with?

02:53:19 **A.** Me and my girlfriend were staying with Sharon and
02:53:23 Paul Wescott.

02:53:24 **Q.** And whose house was it?

02:53:26 **A.** Sharon and Paul Wescott's.

02:53:29 **Q.** Were they related to Jennifer Wescott?

02:53:31 **A.** Yes, those were her parents.

02:53:33 **Q.** Did that house have any kind of a deck on it?

02:53:37 **A.** Yes.

02:53:38 **Q.** Where was that deck?

02:53:39 **A.** It was on the side of the house, and it like wrapped 02:53:44 around the house to the back.

02:53:45 **Q.** I'd like to direct your attention to a conversation 02:53:48 in 2003 at Jennifer Wescott's parents' house on the back 02:53:56 deck. Did you ever have a conversation with Roger 02:54:00 Breckenridge, not you have a conversation, but did Roger 02:54:06 Breckenridge and Jen Wescott ever have a conversation in 02:54:09 your presence about Heidi Allen's disappearance?

02:54:13 MR. OAKES: Objection.

02:54:13 **A.** Yes.

02:54:14 MR. OAKES: Leading.

02:54:15 THE COURT: No, it's foundational.

02:54:18 **Q.** What did Roger Breckenridge say in your presence?

02:54:21 **A.** You want the whole conversation?

02:54:25 **Q.** Please.

02:54:26 **A.** All right, we were standing, there was probably 02:54:29 about six or seven of us. We were having conversation. 02:54:34 I'm not sure who, but someone at the time had mentioned

02:54:38 Heidi Allen's name. At that point Jen kind of -- she laughed, but it was more so like a chuckle, like a here we go again type of attitude, and Roger laughed as well, and he said that he took that bitch to the scrap yard in the van, they had it crushed, and that she was shipped to Canada.

02:55:06 **Q.** Did he say what -- what scrap yard it was first taken to?

02:55:10 **A.** At that point he did not.

02:55:13 **Q.** And did he make any gestures with his hands when he was talking about this?

02:55:17 **A.** Yes. He swung his arm up behind him and pointed to the northern direction of the sky and he said, "See you, bye," as he left.

02:55:28 **Q.** And what did Jennifer Wescott do or say?

02:55:32 **A.** You can tell by her attitude that she was irritated. She slapped Roger on the top of her -- like kind of like a backhand and told him that he shouldn't be -- she said, "You shouldn't be talking about that shit, Rog."

02:55:48 **Q.** What did Roger say?

02:55:51 **A.** "What, Jen, it's done and over with, and besides, nobody's ever going to find her."

02:55:56 **Q.** Do you remember hearing any other conversations in that same time period about Heidi Allen in the presence of Roger Breckenridge, James Steen and Jen Wescott?

02:56:11 **A.** There was always hints, and like any time that her
02:56:16 name or the --
02:56:17 MR. OAKES: Objection, Your Honor.
02:56:19 THE COURT: Specifically about that day?
02:56:22 MS. BIANCO: The time frame between 2001 to
02:56:25 2002.
02:56:26 THE COURT: Is that the first time frame?
02:56:28 MR. OAKES: Well, actually, Your Honor, the
02:56:30 witness is talking about hints which seems to be
02:56:32 speculative as opposed to hearing statements.
02:56:35 THE COURT: I -- I would agree to hints.
02:56:37 THE WITNESS: It wasn't so much as hints, it
02:56:39 was just tidbits.
02:56:40 THE COURT: Hold on. Ask the question again.
02:56:41 **Q.** Well, was it hints or was it actual information?
02:56:45 **A.** It was actual information, but it was nothing in
02:56:47 length, the conversation was never in length, it was only a
02:56:51 few words here and there.
02:56:53 **Q.** Could you tell us about some of -- let's talk about
02:56:57 one of those conversations where James Steen is present.
02:57:01 Where would that conversation have been?
02:57:02 **A.** That was in Parish in probably late 2006, early
02:57:13 2007. We were at Rodney West's house in Parish.
02:57:17 **Q.** What was said?
02:57:19 **A.** They were having --

02:57:21 **Q.** When you say they, who is they?

02:57:22 **A.** James Steen and Rodney West, they were talking amongst each other about another individual, I'm not sure who they were referring to, James Steen was upset about this individual, so it wasn't like a disagreement as far as them not liking -- just something was said that James Steen was upset about, and he made the comment about him not being afraid to go to jail and that he -- he says, "You know me, Rodney," well, his name, his nickname is Shaggy, "You know me, Shaggy, I'm not afraid to go to prison, I'll go for anybody." A brief pause was -- he, James Steen, had a brief pause, and then he said that, "I can, however, tell you I will never see a day in prison for what we did to Heidi."

02:58:24 **Q.** And where were you standing when this conversation was being had?

02:58:27 **A.** I was sitting at the table, James Steen was to my left and Rodney West was to my right.

02:58:34 **Q.** Were there any other conversations that you heard between from Roger Breckenridge or Jennifer Wescott regarding Heidi Allen's disappearance?

02:58:45 **A.** When I was staying with Sharon and Paul Wescott, Jen was over visiting, and something had came across the TV about --

02:58:54 MR. OAKES: Objection, Your Honor, foundation.

02:58:56 What time frame are we talking?

02:58:57 THE COURT: She said she was living with Wescott's. Can you be more specific about when you were living with the Wescott's?

02:59:03 THE WITNESS: Probably 2002. I'm not good with dates, I'm sorry.

02:59:06 **Q.** That's okay.

02:59:06 **A.** Something had come across the TV on Heidi, and Roger laughed, and he had a smirk on his face, and he looks over at Jen, and Jen looked at him and said, "Don't look at me Rog, I didn't have anything to do with it. I only took the van to Murtaugh's."

02:59:25 **Q.** Was there any other conversations that you remember?

02:59:29 **A.** Not that I can recall.

02:59:31 **Q.** And why didn't you come forward earlier with what you heard?

02:59:36 **A.** Because I was afraid. I was only one person. I didn't feel as though I had enough to go on. It's not that I didn't believe him, I did believe that he was telling the truth, but I was afraid, I didn't know what could happen.

02:59:55 **Q.** Do you want to be here today?

02:59:57 **A.** Yes. I want to do what -- what's right.

03:00:03 **Q.** Thank you very much, Amanda.

03:00:05 **A.** Thank you.

03:00:07 MS. BIANCO: Oh, excuse me one second.

03:00:09 THE COURT: You need time?

03:00:10 THE WITNESS: No.

03:00:10 THE COURT: Are you all right?

03:00:11 THE WITNESS: Yep, good.

03:00:13 **Q.** Oh, was there ever a time that you were told where
03:00:17 Heidi Allen's body may be?

03:00:20 MR. OAKES: Objection, hearsay.

03:00:22 THE COURT: Oh, no, we have that standing --
03:00:24 depending on who the answer's going to be coming from,
03:00:27 we have a standing objection regarding declaration of
03:00:30 penal interest, so depends on where the answer's coming
03:00:33 from, okay?

03:00:33 MR. OAKES: Right.

03:00:34 THE COURT: If it's coming from one of the
03:00:35 three, it will be allowed in and looked at by the
03:00:38 Court, okay?

03:00:39 **Q.** Was there ever a time that you were made aware of
03:00:43 where Heidi Allen's body may be?

03:00:45 **A.** Other than Roger saying that they hauled her to
03:00:49 Canada?

03:00:49 **Q.** Yes.

03:00:51 **A.** No.

03:00:52 **Q.** Did you ever have an occasion to look in the woods
03:00:55 or -- off of Rice Road?

03:00:57 **A.** Yes.

03:00:58 MR. OAKES: Objection, leading.

03:00:59 THE COURT: Sustained.

03:00:59 **Q.** Where would you have -- where did you look for Heidi
03:01:02 Allen's remains or body?

03:01:04 **A.** On Rice Road.

03:01:05 **Q.** Rice Road?

03:01:08 **A.** Yes.

03:01:08 **Q.** And why'd you do that?

03:01:09 **A.** Because Tonya had came to me and said that James
03:01:14 Steen had told her --

03:01:14 MR. OAKES: Objection, Your Honor, hearsay.

03:01:17 THE COURT: Sustained.

03:01:19 MS. BIANCO: No further questions.

CROSS-EXAMINATION

03:02:03 BY MR. OAKES:

03:02:04 **Q.** Good afternoon, Ms. Braley.

03:02:05 **A.** Good afternoon.

03:02:06 **Q.** What's your relationship to Roger Breckenridge?

03:02:10 **A.** He was dating -- well, my -- I was dating Jennifer
03:02:17 Lumley at the time, and she was family friends of Jennifer
03:02:20 Wescott's family.

03:02:23 **Q.** And is that basically how you knew Jen Wescott as
03:02:26 well?

03:02:26 **A.** Yes.

03:02:27 **Q.** And how did you know Thumper?

03:02:28 **A.** Thumper was a family friend of their family.

03:02:34 **Q.** Do you know Michael Bohrer, ever met Michael Bohrer?

03:02:39 **A.** I met him once. I don't really recall too much of
03:02:43 what, you know, I met him at Tom Martin's house.

03:02:47 **Q.** Okay, did Mr. Bohrer's name ever come up in any of
03:02:51 these conversations that you heard?

03:02:52 **A.** No.

03:02:54 **Q.** Now in 2002 to 2003, you were living with Sharon and
03:03:12 Paul Wescott?

03:03:13 **A.** I believe. I'm not really, like I said, I'm not
03:03:17 really good with dates but it was --

03:03:18 **Q.** Generally that time frame though, Ms. Braley?

03:03:21 **A.** Yes.

03:03:21 **Q.** And how long were you living there for, ballpark?

03:03:23 **A.** I would say a few months. I was staying with my
03:03:27 girlfriend at the time. She, you know, we decided to stay
03:03:30 there to help Sharon out because she was diagnosed with
03:03:33 cancer and we were there to help her.

03:03:36 **Q.** Okay, very nice of you. Now, you talked to Ms.
03:03:42 Bianco about a conversation that took place on the deck of
03:03:46 the house at one time?

03:03:47 **A.** Yes.

03:03:48 **Q.** And do you recall when that was? I think you said
03:03:52 it was 2003?

03:03:53 **A.** Yes, it was in 2003.

03:03:55 **Q.** Were you still living at the house at that time?

03:03:57 **A.** I don't believe so.

03:03:57 **Q.** You had moved out?

03:03:59 **A.** I believe.

03:03:59 **Q.** Okay, and you testified to certain statements that
03:04:07 you heard Roger Breckenridge make, one of those being, "We
03:04:10 took that bitch to the scrap yard in the van?"

03:04:13 **A.** Yes.

03:04:14 **Q.** He didn't specify who we?

03:04:17 **A.** No.

03:04:17 **Q.** We was?

03:04:18 **A.** No.

03:04:19 **Q.** Did he say how she came to be in the van?

03:04:33 **A.** No.

03:04:34 **Q.** He didn't say that he had abducted or kidnapped her
03:04:38 from the store did he?

03:04:39 **A.** No.

03:04:39 **Q.** He didn't say anything about killing her did he?

03:04:43 **A.** No, not in my presence.

03:04:46 **Q.** He didn't say anything about dismembering her or
03:04:50 chopping up her body or anything like that?

03:04:52 **A.** Not to me.

03:04:52 **Q.** He didn't say anything about burning the body?

03:04:56 **A.** No.

03:04:57 **Q.** At any point? He didn't really -- and he didn't

03:05:03 specify whether he had contact with her while she was even
03:05:07 alive did he?

03:05:08 **A.** No.

03:05:08 **Q.** Did he say where the van came from?

03:05:13 **A.** Nope.

03:05:15 **Q.** And at that point you said when he made the
03:05:21 comment -- well, let me ask you, you guys are on the deck
03:05:24 of the house?

03:05:24 **A.** Yes.

03:05:25 **Q.** Is this summertime, springtime?

03:05:26 **A.** I want to say it was summertime, early summer.

03:05:30 **Q.** Okay, was this weekday, weekend if you remember,
03:05:33 Jen?

03:05:33 **A.** I'm not sure.

03:05:34 **Q.** Was there a party or something going on, special
03:05:37 occasion?

03:05:37 **A.** No, people would be in and out stopping by to visit.

03:05:42 **Q.** And I guess was it just people hanging out or was it
03:05:47 more of like a party going on?

03:05:48 **A.** It was not a party.

03:05:50 **Q.** Okay, was there food or drinks being served?

03:05:53 **A.** No.

03:05:53 **Q.** Were people drinking?

03:05:55 **A.** Not that I recall, no.

03:05:57 **Q.** Okay, and at that time you said when he made a

03:06:07 comment, Jen responded essentially saying Roger, you can't
03:06:11 be saying that stuff or that shit?

03:06:13 **A.** Yeah.

03:06:14 **Q.** Okay, and Roger's response was, "That shit is done
03:06:18 and over with?"

03:06:19 **A.** Yes.

03:06:20 **Q.** Okay, did you get the impression when he said that
03:06:23 that he wasn't concerned about being charged with it?

03:06:26 **A.** Yes.

03:06:27 **Q.** That as far as he knew, there's no way he was going
03:06:30 to get charged with it?

03:06:31 **A.** Right.

03:06:32 MS. BIANCO: Objection to what Roger knew.

03:06:33 THE COURT: Sustained.

03:06:34 **Q.** Did he seem particularly concerned that he could get
03:06:37 in trouble by making that statement?

03:06:39 MS. BIANCO: Objection to how if he was
03:06:40 concerned and what's in his mind.

03:06:43 THE COURT: Concern, that's a general
03:06:44 observation. I'll allow that.

03:06:47 **Q.** Did he seem concerned about it when he said it?

03:06:49 **A.** No.

03:06:49 **Q.** I mean he wasn't whispering it was he?

03:06:53 **A.** No.

03:06:53 **Q.** Wasn't secretive about it?

03:06:55 **A.** No.

03:06:55 **Q.** Kind of almost in your description kind of
03:06:58 boastfully saying it?

03:07:00 **A.** He wanted to be sure that we knew it.

03:07:03 **Q.** Okay, was Roger kind of a loud mouth?

03:07:07 **A.** Not really. He -- to me he seemed, you know, if
03:07:10 he -- if he made the -- if he said something, he was more
03:07:14 like to do it. He wasn't afraid of getting in any sort of
03:07:20 trouble.

03:07:20 **Q.** Well, and that's my question is when he said it, he
03:07:24 didn't seem like he thought he was going to get in trouble,
03:07:27 right?

03:07:27 **A.** He didn't seem --

03:07:28 MS. BIANCO: Objection to what --

03:07:30 THE COURT: Sustained.

03:07:34 **Q.** But as his response -- never mind. And did you
03:07:53 think he was serious when he said it?

03:07:56 **A.** Um hum.

03:07:56 **Q.** You thought he was talking about a real incident?

03:08:00 **A.** Yes.

03:08:00 **Q.** Based on hearing those words, you thought he might
03:08:02 have actually disposed of Heidi Allen's body?

03:08:06 **A.** Yes.

03:08:06 **Q.** Okay, so since that -- well, that night then, you
03:08:10 reported it to police, right?

03:08:11 **A.** No.

03:08:11 **Q.** The next day?

03:08:13 **A.** No.

03:08:14 **Q.** The following month?

03:08:15 **A.** No.

03:08:15 **Q.** Never?

03:08:17 **A.** Nope.

03:08:18 **Q.** Okay, so after that day, you never had any other contact with Mr. Breckenridge, right?

03:08:23 **A.** No, I did.

03:08:25 **Q.** You did?

03:08:25 **A.** Yeah.

03:08:26 **Q.** This man you thought sincerely and honestly disposed of Heidi's body, you kept hanging around him?

03:08:35 **A.** I really didn't have a choice in the matter.

03:08:37 **Q.** You weren't living there at that point, right?

03:08:39 **A.** Right.

03:08:40 MS. BIANCO: Objection, argumentative.

03:08:41 THE COURT: No, I'll allow it.

03:08:43 **Q.** You weren't living at the Wescott residence at that time were you?

03:08:45 **A.** No.

03:08:45 **Q.** You didn't have to see Roger and Jen did you?

03:08:50 **A.** My girlfriend chose to see Roger and Jen.

03:08:54 **Q.** Okay, so you always had to do what your girlfriend

03:08:57 told you?

03:08:57 **A.** Pretty much, yeah, that was the type of relationship
03:09:00 we had.

03:09:01 **Q.** Okay.

03:09:02 THE COURT: I'm going to strike that question
03:09:04 and answer as being non-relevant and somewhat
03:09:06 argumentative.

03:09:08 MR. OAKES: Okay.

03:09:11 **Q.** You went -- after the date when you heard Roger
03:09:13 saying this, you went to other social functions when Roger
03:09:17 was there?

03:09:17 **A.** Maybe, sure. I --

03:09:20 **Q.** One time?

03:09:21 **A.** I'm not positive.

03:09:23 **Q.** You're not sure? Well, did you see Roger after that
03:09:26 date?

03:09:26 **A.** Yes, I did.

03:09:27 **Q.** At least one time?

03:09:29 **A.** A few times, yes.

03:09:30 **Q.** A few times?

03:09:31 **A.** Yes.

03:09:31 **Q.** And you voluntarily hung out with this man that you
03:09:36 believed had disposed of Heidi Allen's body?

03:09:39 **A.** I wouldn't say voluntarily, but yes, I did see Roger
03:09:43 after the fact.

03:09:44 **Q.** Nobody was holding a gun to your head and taking you
03:09:47 to parties were they?

03:09:48 **A.** No.

03:09:50 **Q.** Okay. Now you testified --

03:10:07 MR. OAKES: Excuse me one moment, Your Honor.

03:10:08 THE COURT: Sure.

03:10:09 (Whereupon, there was a pause in the
03:10:29 proceeding.)

03:10:29 **Q.** Now you testified today that you were at a party at
03:10:32 Rod West house in Parish?

03:10:35 **A.** It wasn't a party.

03:10:36 **Q.** I'm sorry, you were at Rod West house?

03:10:38 **A.** Yes.

03:10:38 **Q.** And that was in 2006 or 2007?

03:10:40 **A.** Yes.

03:10:45 **Q.** Now, your testimony today is that at that party you
03:10:50 heard James Steen and Rod West talking.

03:10:55 **A.** Yes.

03:10:55 **Q.** And during that conversation, James Steen said words
03:11:00 to the effect, "I'm not afraid to go to jail."

03:11:03 **A.** Right.

03:11:04 **Q.** And then at some point he said, "You know me
03:11:10 Shaggy," referring to Rod West, "I'll go to prison for
03:11:13 anybody?"

03:11:13 **A.** Yes.

03:11:14 **Q.** And then he said words to the effect, "I'll never
03:11:18 see a day in prison for what we did to Heidi?"

03:11:21 **A.** Yes, after a pause, he had picked up conversation
03:11:28 again and stated, "Although I will never see a day in
03:11:32 prison for what we did to Heidi."

03:11:35 **Q.** Okay, those are the words out of James Steen's
03:11:37 mouth?

03:11:37 **A.** Yes.

03:11:38 **Q.** Did you believe him?

03:11:39 **A.** Yes.

03:11:40 **Q.** Did you ever see James Steen after that day?

03:11:43 **A.** Not that I recall.

03:11:45 **Q.** Okay, that was the last time you ever saw James
03:11:48 Steen?

03:11:48 **A.** Yes.

03:11:49 **Q.** Now when you heard that from James Steen, you called
03:11:53 the police immediately, right?

03:11:54 **A.** No.

03:11:55 **Q.** The next day?

03:11:56 **A.** No.

03:11:56 **Q.** The following month?

03:11:57 **A.** No.

03:11:58 **Q.** Never called the police did you?

03:11:59 **A.** No.

03:12:01 **Q.** Even though you weren't having regular contact with

03:12:04 James Steen, you never called anybody in law enforcement to
03:12:08 report his statement?
03:12:09 **A.** No.
03:12:09 **Q.** When did you live in Oswego County?
03:12:13 **A.** Until 2004, no, 2007.
03:12:19 **Q.** So while you were living in Oswego County, you were
03:12:21 familiar with the Heidi Allen case?
03:12:24 **A.** Sorta. I was really young at the time that it
03:12:29 happened. I didn't really know too much.
03:12:32 **Q.** Okay, but when they mentioned Heidi Allen, you knew
03:12:36 what they were talking about?
03:12:38 **A.** Yeah.
03:12:39 **Q.** And you knew it was a pretty significant case?
03:12:42 **A.** Yeah.
03:12:42 **Q.** And your testimony is you believed James Steen when
03:12:49 he said that?
03:12:50 **A.** Yeah.
03:12:50 **Q.** You believed Roger Breckenridge?
03:12:52 **A.** Yes.
03:12:53 **Q.** I believe you told defense counsel that you came
03:12:59 forward -- let me ask you. Did you see the newspaper
03:13:03 reports at the end of July of 2014?
03:13:06 **A.** Yes.
03:13:06 **Q.** And based upon seeing those reports, is that when
03:13:10 you came forward?

03:13:12 A. You can say that, yeah.
03:13:14 Q. Did you read those reports that were in the paper?
03:13:17 A. Yeah. Not until August.
03:13:20 Q. Not until August?
03:13:22 A. I didn't know the case was brought -- being brought
03:13:26 back up until August.
03:13:27 Q. Until August?
03:13:28 A. I believe.
03:13:29 Q. Okay. So when you noticed in August, did you read
03:13:37 the newspaper accounts then?
03:13:38 A. Yes.
03:13:39 Q. Did you read the statements that were attributed to
03:13:43 Tonya Priest in the newspaper accounts?
03:13:45 A. Yes.
03:13:45 Q. But you read it all, would that be fair to say?
03:13:50 A. Probably.
03:13:51 Q. So you picked up a number of details about the case
03:13:55 at that time in reading those newspaper accounts.
03:14:00 A. You can say that I guess.
03:14:02 Q. And you at least learned of the allegations that Ms.
03:14:04 Priest was making, correct?
03:14:05 A. Yes.
03:14:05 Q. And you had read about the statements that were
03:14:08 being attributed to Jen Wescott by Tonya Priest?
03:14:13 A. Yes.

03:14:13 **Q.** At some point after reading that, you went to the
03:14:21 Federal Public Defender's Office and met with them,
03:14:24 correct?

03:14:24 **A.** No.

03:14:25 **Q.** No?

03:14:27 **A.** No.

03:14:27 **Q.** Did you meet with a member of the Federal Public
03:14:32 Defender's Office?

03:14:32 **A.** Yes.

03:14:32 **Q.** Who was that?

03:14:34 **A.** Lisa.

03:14:34 **Q.** Okay, Ms. Peebles.

03:14:35 **A.** Yes.

03:14:35 **Q.** Just for the record, Ms. Peebles is sitting here,
03:14:39 the young lady here?

03:14:40 **A.** Yes.

03:14:40 **Q.** Okay, and where did you meet with her?

03:14:44 **A.** At my house.

03:14:45 **Q.** And so why did you meet at your house?

03:14:49 **A.** Tonya had contacted Lisa, Ms. Peebles.

03:14:52 **Q.** Tonya Priest?

03:14:54 **A.** Yes.

03:14:55 **Q.** Had you spoke to Ms. Priest by phone or in person
03:14:59 before speaking with Ms. Peebles?

03:15:00 **A.** No, I did not.

03:15:01 **Q.** Okay, well, how did Ms. Priest contact Ms. Peebles to meet up with you then?

03:15:07 **A.** Because I was around, I'm assuming that Tonya Priest knew that I was around and I knew of these people and that I could possibly know information, so she directed Lisa to contact me.

03:15:23 **Q.** Okay, so Ms. Peebles just contacted you out of the blue?

03:15:27 **A.** Pretty much, yes.

03:15:28 **Q.** You didn't reach out to her?

03:15:30 **A.** No.

03:15:30 **Q.** She just show up at your house one day?

03:15:35 **A.** I believe so.

03:15:38 **Q.** Okay. And how long did you guys talk for at your house?

03:15:45 **A.** Probably around an hour.

03:15:46 **Q.** Okay, and are you a little bit nervous testifying here today, Jen?

03:15:54 **A.** Yes.

03:15:55 **Q.** It's a courtroom, it's kind of imposing, right?

03:15:58 **A.** Yeah.

03:15:58 **Q.** But the day you met with Ms. Peebles you were at your house?

03:16:01 **A.** Yes.

03:16:02 **Q.** Okay, you were in the comfort of your own home?

03:16:05 **A.** We were outside at the picnic table, yes.
03:16:07 **Q.** So kind of a relaxed environment, just kind of a
03:16:10 casual conversation?
03:16:11 **A.** Yes.
03:16:11 **Q.** And during that hour, did Ms. Peebles explain to you
03:16:16 who she was and that she was representing Mr. Thibodeau?
03:16:19 **A.** Yes.
03:16:19 **Q.** And she explained the importance of this case to you
03:16:21 at that time?
03:16:21 **A.** Yes.
03:16:22 **Q.** And at that point did you tell her everything you
03:16:26 knew about the case?
03:16:27 **A.** Yes.
03:16:28 **Q.** You told her about all the statements that Roger
03:16:31 Breckenridge made?
03:16:32 **A.** Um hum.
03:16:32 **Q.** You told her about all the statements that James
03:16:35 Steen had made?
03:16:36 **A.** I told her about -- I don't think I went into detail
03:16:40 about James Steen's conversation, but I told her that we
03:16:46 had a conversation.
03:16:46 **Q.** Okay, well, you had read in the paper that James
03:16:49 Steen's name had come up in the context of this new
03:16:52 investigation, right?
03:16:53 **A.** Yeah.

03:16:53 **Q.** Based on what you heard between Thumper and Shaggy, you figured that was pretty important, right?

03:17:00 **A.** Yeah.

03:17:01 **Q.** So you mentioned that to Ms. Peebles at the time?

03:17:03 **A.** Yeah.

03:17:03 **Q.** Okay, now on that date, did you give her a written statement?

03:17:08 **A.** No, I did not.

03:17:09 **Q.** That was another date?

03:17:10 **A.** Yes.

03:17:10 **Q.** How many days later?

03:17:11 **A.** I'm not sure.

03:17:12 **Q.** A couple days, a few days, a week, ballpark, Jen?

03:17:17 **A.** At least a week.

03:17:18 **Q.** And where did that meeting take place?

03:17:20 **A.** At my house.

03:17:22 **Q.** Okay, did she bring a typewritten statement to you, the house?

03:17:26 **A.** Richard did.

03:17:27 **Q.** Mr. Haumann?

03:17:27 **A.** Yes.

03:17:28 **Q.** The investigator for the Federal Public Defender's Office?

03:17:32 **A.** Yes.

03:17:38 MR. OAKES: Jen, can I get this marked please?

03:17:40 (People's Exhibit K was marked for
03:18:07 identification).

03:18:07 **Q.** Now this conversation that you had with Mr. -- well,
03:18:09 I'm sorry, strike that. The conversation you heard between
03:18:13 Thumper and Shaggy, Rod West?

03:18:15 **A.** Yeah.

03:18:17 **Q.** That was in oh-six, oh-seven?

03:18:17 **A.** I believe so, yes.

03:18:19 **Q.** Okay, you had testified to Ms. Bianco you had broken
03:18:24 up with Jen Lumley at that time or you broke up with her in
03:18:27 2006 or you guys had broken up?

03:18:30 **A.** I think it was late 2006.

03:18:33 **Q.** Okay, were you still together at the time of that
03:18:35 party or that gathering at Rod's place?

03:18:37 **A.** No.

03:18:38 **Q.** Okay, so you went there voluntarily at Rod's place?

03:18:45 **A.** Yes, I did.

03:18:46 **Q.** And when you got there, was Roger Breckenridge
03:18:49 already there?

03:18:50 **A.** No, he wasn't there at all.

03:18:51 **Q.** Was Jen Wescott there?

03:18:54 **A.** No.

03:18:55 **Q.** And that's -- but it was on that occasion you heard
03:19:03 those statements from James Thumper Steen?

03:19:06 **A.** Yes.

03:19:08 **Q.** Now, when you gave -- I'm going to show you what's been marked for identification as People's Exhibit K.

03:19:18 MR. OAKES: May I approach, Your Honor?

03:19:19 THE COURT: Sure.

03:19:22 **Q.** Do you recognize that document, Ms. Braley?

03:19:27 **A.** Yes.

03:19:27 **Q.** What is that document?

03:19:31 **A.** It's my statement.

03:19:32 **Q.** It's an affidavit. Is it an affidavit that you gave to Mr. Haumann?

03:19:36 **A.** Yeah.

03:19:36 **Q.** Okay, that's fine. And when you gave that affidavit, you knew it was important, right?

03:19:42 **A.** Yes.

03:19:43 **Q.** You knew it was going to be involved with this case?

03:19:46 **A.** Yes.

03:19:47 **Q.** And you knew how important this case was, right?

03:19:49 **A.** Yes.

03:19:49 **Q.** So when you gave that statement, did you try to be -- well, were you truthful?

03:19:55 **A.** Yes.

03:19:56 **Q.** Did you give as much information as you could?

03:20:01 **A.** Yes.

03:20:02 **Q.** Basically everything you knew about the case you put in there?

03:20:06 **A.** I believe, so, yes.

03:20:15 **Q.** Ms. Braley, can you show me on that affidavit where you put where you mentioned James Steen's comments to Roger Shaggy West, Rod Shaggy West?

03:20:27 **A.** It's not on here.

03:20:29 **Q.** Okay.

03:20:29 **A.** But I did say it.

03:20:31 **Q.** Okay, but it just didn't make its way into the affidavit?

03:20:34 **A.** Right.

03:20:34 **Q.** Okay. Public Defender's Office forgot to put that in?

03:20:42 MS. BIANCO: Objection to what we forgot.

03:20:43 THE COURT: Sustained.

03:20:48 **Q.** Now, when you heard Roger in 2003 and you said you believed him, right?

03:21:00 **A.** Yes.

03:21:01 **Q.** So based on that belief, you thought Heidi Allen's body was in a van to Canada, right?

03:21:05 **A.** (Nods.) Yes.

03:21:10 **Q.** In 2006 you met up with Tonya Priest didn't you?

03:21:15 **A.** Yes.

03:21:16 **Q.** And you walked in the woods on Rice Road?

03:21:18 **A.** Yes.

03:21:19 **Q.** And you were looking for Heidi Allen's body there

03:21:23 weren't you?

03:21:23 **A.** We were looking for a cabin.

03:21:25 **Q.** Okay, that you thought might contain Heidi Allen's
03:21:29 remains?

03:21:29 **A.** Yes.

03:21:29 **Q.** But didn't you think she was in a van to Canada?

03:21:34 **A.** Yes. She didn't tell me too much of what James
03:21:40 Steen had told her, she told me that she -- what James
03:21:45 Steen --

03:21:45 MR. OAKES: Objection, Your Honor. There is
03:21:46 no question before the witness.

03:21:47 THE COURT: No question before you.

03:21:56 MR. OAKES: No further questions, Your Honor.

03:22:20 THE COURT: Ms. Bianco?

03:22:22 MS. BIANCO: No redirect, Your Honor.

03:22:24 THE COURT: You can step down.

03:22:25 THE WITNESS: Thank you.

03:22:26 THE COURT: Counsel approach please.

(Whereupon, there was an off the record
03:24:02 discussion at the bench).

03:24:02 THE COURT: Court is in recess until nine
03:24:05 o'clock tomorrow morning.

(Conclusion of Proceeding).

* * *

CERTIFICATE

I, JENNIFER ADYDAN, an Official Court Reporter in and for the State of New York, Fifth Judicial District, do hereby certify that the foregoing is a true, complete and accurate transcript of my stenographic notes taken in the above-entitled matter and the whole thereof to the best of my ability.

Jennifer Adydan

Jennifer Adydan
Official Court Reporter

DATED: January 26, 2015

08:49:57 COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF OSWEGO: CRIMINAL TERM:
---------------------------------------x

Indict. No.
THE PEOPLE OF THE STATE OF NEW YORK 94C-0161

HEARING
- against- VOLUME 5

GARY THIBODEAU,

Defendant.

---------------------------------------x

Oswego County Courthouse
25 E. Oneida Street
Oswego, NY 13126

DATE: January 16, 2015

Before:

HONORABLE DANIEL R. KING
Acting County Court Judge

Appearances:

GREGORY S. OAKES, ESQ.
District Attorney, Oswego County
MARK M. MOODY, ESQ.
Chief Assistant District Attorney

OFFICE OF THE FEDERAL PUBLIC DEFENDER
BY: LISA PEEBLES, ESQ., Public Defender
RANDI JUDA BIANCO, ESQ., Assistant Public Defender

Defendant is present

INDEX TO WITNESSES

	Direct	Cross	Redirect	Recross
FOR THE DEFENDANT:				
Richard Haumann	701	717	732	--
Richard Murtaugh	736	742	753	--
Megan Shaw	756	765	774	--
James Pietroski	776	817	853	885
			897	904

INDEX TO EXHIBITS

	Identification	Evidence
FOR THE DEFENDANT:		
26. Transcript of conversation	--	832
32. Transcript of video interview	--	832
66(A-F). Rice Road photos	--	716
131. E-mail	779	780
FOR THE PEOPLE		
I. Photo, Cadillac, two vans	350	745
L. Photo, Cabin 1	722	724
M. Photo, Cabin 1	722	724
N. Photo, Cabin 1	722	724
O. Photo, 7/29/14 worksite	842	843
P. Photo, 7/29/14 worksite	842	843
Q. Photo, 7/29/14 worksite	842	843
R. Photo, 7/29/14 worksite	842	843
S. Photo, 7/29/14 worksite	842	843

T.	Photo, 7/29/14 worksite	842	843
U.	Photo, backfilled worksite	842	851
V.	Photo, backfilled worksite	842	851
W.	Photo, backfilled worksite	842	851
X.	Photo, backfilled worksite	842	851
Y.	Photo, 7/31/14 worksite	842	850
Z.	Photo, 7/31/14 worksite	842	850
AA.	Photo, 7/31/14 worksite	842	850
BB.	Photo, 7/31/14 worksite	842	850
CC.	Photo, 7/31/14 worksite	842	850
DD.	Photo, 7/29-7/30/14 worksite	846	847
EE.	Photo, 7/29-7/30/14 worksite	846	847
FF.	Photo, 7/29-7/30/14 worksite	846	847
GG.	Photo, 7/29-7/30/14 worksite	846	847
HH.	Photo, 7/29-7/30/14 worksite	846	847
II.	Photo, 7/29-7/30/14 worksite	846	847
JJ.	Photo, 7/29-7/30/14 worksite	846	847

09:02:48 MS. PEEBLES: Judge, can we approach?

09:02:49 THE COURT: Absolutely.

09:02:50 (Whereupon, there was an off the record discussion at the bench.)

09:04:32 THE COURT: Is the public defender ready?

09:04:35 MS. PEEBLES: Yes.

09:04:35 THE COURT: People ready?

09:04:36 MR. OAKES: Yes, Your Honor.

09:04:38 THE COURT: Ms. Peebles, Ms. Bianco, call your
09:04:40 next witness please.

09:04:41 MS. BIANCO: Certainly, Judge. If I may have
09:04:43 just one moment.

09:04:43 THE COURT: Yes. I thought you said you were
09:04:45 ready.

09:04:46 MS. BIANCO: I am ready. Just need some
09:04:48 exhibits so I don't have to go back and forth.

09:05:07 THE COURT: Is this Richard Haumann?

09:05:08 MS. BIANCO: Richard Haumann.

09:05:53 THE CLERK: Raise your right hand, put your
09:05:56 left on the Bible.

RICHARD HAUMANN, Called as a witness, having
09:05:58 been duly sworn, was examined and testified as follows:

09:05:58 THE CLERK: Please state your name for the
09:06:04 record.

09:06:04 THE WITNESS: Richard Haumann.

09:06:05 THE CLERK: Spell your last name.

09:06:06 THE WITNESS: H-A-U-M-A-N-N.

09:06:08 THE CLERK: Okay, thank you. Have a seat.

09:06:10 THE COURT: Mr. Haumann, before we start, do
09:06:12 you consent to having your testimony video, audio
09:06:15 taped?

09:06:16 THE WITNESS: That's fine.

09:06:17 THE COURT: That's a consent then, okay.

DIRECT EXAMINATION

09:06:22 BY MS. BIANCO:

09:06:23 **Q.** Chief Investigator Haumann, where are you currently
09:06:26 employed?

09:06:26 **A.** The Office of Federal Public Defender.

09:06:29 **Q.** And in what capacity?

09:06:31 **A.** I'm a chief investigator for the office.

09:06:32 **Q.** How long have you worked as an investigator with the
09:06:36 Federal Public Defender's Office?

09:06:37 **A.** I believe we're going into our sixteenth year.

09:06:40 **Q.** And where were you previously employed?

09:06:42 **A.** I was previously employed at the Syracuse Police
09:06:46 Department.

09:06:46 **Q.** In what capacity?

09:06:47 **A.** I retired as the deputy chief of investigations and
09:06:51 field operations.

09:06:52 **Q.** Before you were the deputy chief of field

09:06:55 operations, what were your other positions with the Syracuse Police Department?
09:06:57

09:06:57 **A.** Started as a patrolman, investigator, sergeant, lieutenant, department chief.
09:07:03

09:07:05 **Q.** And when you were the deputy chief, how many people were under you?
09:07:08

09:07:10 **A.** I think approximately five to six-hundred, I'm not sure the exact number.
09:07:14

09:07:15 **Q.** How many total years did you spend in law enforcement?
09:07:19

09:07:20 **A.** Thirty-five.

09:07:21 **Q.** And what type of training did you receive as -- to be a law enforcement officer?
09:07:25

09:07:26 **A.** I'm a graduate of the FBI National Academy, the police academy, New York State Police Academy. Let's see. I got a number of training hours, probably over a thousand.
09:07:31
09:07:37

09:07:41 **Q.** Have you ever put on training yourself?

09:07:44 **A.** Yes.

09:07:44 **Q.** What type of seminars?

09:07:46 **A.** Investigations.

09:07:49 **Q.** In addition to your training, what is your educational background?
09:07:53

09:07:55 **A.** I have a Bachelor's Degree.

09:07:57 **Q.** Have you ever been involved in any homicide investigations?
09:08:00

09:08:01 **A.** Numbers.

09:08:03 **Q.** Did any of those investigations involve charred remains or burned remains?

09:08:14 **A.** Yes.

09:08:15 **Q.** Approximately how many?

09:08:17 **A.** I really couldn't tell you how many. Probably forty, fifty, fire cases most of them.

09:08:27 **Q.** How -- do you know how hot a fire has to burn in order -- how hot a fire has to be in order to burn a body?

09:08:39 MR. OAKES: Objection, Your Honor, as to the witness's qualifications. I don't believe he's an expert in pyrotechnics.

09:08:46 THE COURT: Let's see if he knows this. The fact he may have investigated homicides and charred remains may not make him eligible to testify to the degree of a fire. Let's see if he has any training in that.

09:08:57 **A.** I don't know how hot a fire has to be.

09:09:01 **Q.** Well, have you ever seen a charred remains after somebody attempted to burn a body?

09:09:06 **A.** I've seen numbers of charred remains.

09:09:10 **Q.** And with regards to those charred remains, what -- are there -- are there bones still there or -- or are the bones disintegrated?

09:09:20 **A.** There's bones, generally there's skin, muscle

09:09:23 tissue, innards, liquids.

09:09:37 **Q.** So generally speaking, when you have done investigations on charred remains, you still have some evidence of bones?

09:09:42 **A.** Yes. I've never seen a charred remain --

09:09:50 MR. OAKES: Objection, Your Honor.

09:09:52 THE COURT: There is not a question for you.

09:09:53 **Q.** Have you ever seen a charred remains where there's no bones?

09:09:57 **A.** Never.

09:09:58 **Q.** Have you ever conducted interrogations or witness interviews?

09:10:08 **A.** Yes.

09:10:08 **Q.** Approximately how many times?

09:10:11 **A.** Oh, would be probably in the thousands.

09:10:13 **Q.** Are you currently a licensed private investigator?

09:10:16 **A.** Yes, I am.

09:10:17 **Q.** In your capacity as an investigator with the Office of the Federal Public Defenders, what are your duties?

09:10:25 **A.** They're basically the same as -- as my duties were as a police officer except we don't issue -- we don't get warrants and search warrants.

09:10:35 **Q.** I want to ask you some questions about your investigation into the new evidence in the Gary Thibodeau case. Did there come a point in time when you reviewed

09:10:49 evidence that our office received from District Attorney
09:10:53 Greg Oakes?

09:10:53 **A.** Yes.

09:10:54 **Q.** And did you review that evidence?

09:10:56 **A.** Yes.

09:10:56 **Q.** Was that including a audio tape between Jennifer
09:11:04 Wescott and Tonya Priest?

09:11:07 **A.** Yes.

09:11:07 **Q.** Also a videotape between Investigator Pietroski and
09:11:13 Jennifer Wescott?

09:11:14 **A.** Yes.

09:11:14 **Q.** What did you think about that interview?

09:11:16 MR. OAKES: Objection, Your Honor.
09:11:18 Irrelevant.

09:11:20 THE COURT: I'm not sure of the question to be
09:11:22 honest with you. I mean --

09:11:23 MS. BIANCO: What he does next after he -- he
09:11:25 listens to that.

09:11:27 THE COURT: I'm going to sustain the
09:11:30 objection. I'm not sure if the line of question's
09:11:33 quite proper at this point.

09:11:35 **Q.** Did you come across information that there may have
09:11:38 been a cabin located somewhere on Rice Road?

09:11:41 **A.** Yes.

09:11:42 **Q.** And what did you do in regards to the information

09:11:46 concerning that cabin?

09:11:48 **A.** Went and looked for it.

09:11:50 **Q.** Where did you go and look for it?

09:11:52 **A.** Rice Road.

09:11:53 **Q.** Okay, and when was that?

09:11:55 **A.** Well, there were two cabins. One was in June and
09:11:59 the other one in July.

09:12:01 **Q.** When did you first start looking for a cabin?

09:12:03 **A.** In --

09:12:06 MR. OAKES: Objection, Your Honor. Actually
09:12:07 if I can just get clarification, for the record, when
09:12:09 the witness says June or July, of what year? I think I
09:12:12 know but just for the record.

09:12:13 THE COURT: I'm assuming it's 2013 or
09:12:15 fourteen.

09:12:16 THE WITNESS: Fourteen.

09:12:18 MR. OAKES: Thank you.

09:12:18 **Q.** When did you first start looking for a cabin?

09:12:21 **A.** I'm sorry, we started looking -- I started looking
09:12:23 in probably September, 2013.

09:12:28 **Q.** And how many times did you look for a cabin in
09:12:32 that -- in that time frame from September to say December?

09:12:36 **A.** Probably three or four.

09:12:40 **Q.** And did there come a time when you actually found a
09:12:45 cabin?

09:12:45 **A.** Yes.

09:12:46 **Q.** When was that?

09:12:47 **A.** That was June of 2014.

09:12:49 **Q.** Okay, and where did you find that cabin?

09:12:54 **A.** Rice Road. Off from Rice Road in the woods.

09:12:58 **Q.** And how did you locate it?

09:13:00 **A.** Myself and Mr. O'Brien, Post-Standard, and a friend
09:13:06 of his was a surveyor found it.

09:13:11 **Q.** What did you do in regards to entering the property?
09:13:15 Did you contact any property owners?

09:13:16 **A.** I contacted several property owners. That specific
09:13:20 area was a walkway. I didn't know who owned that property.

09:13:24 **Q.** Let's talk about cabin number one first. What did
09:13:28 you find at cabin number one? Can you tell us where and
09:13:31 what it looked like?

09:13:32 MR. OAKES: Objection, Your Honor. Just for
09:13:35 the sake of the record, for cabin one, we referring to
09:13:37 the cabin he identified in June of 2014 just for
09:13:41 clarification?

09:13:41 MS. BIANCO: Yes.

09:13:42 **Q.** June of 2014, the first cabin you encountered, where
09:13:47 was that?

09:13:48 **A.** It was off of Rice Road toward the Route 11 end.

09:13:51 **Q.** And who was with you when you looked at that cabin?

09:13:54 **A.** Mr. O'Brien and his friend.

09:13:57 **Q.** And what did you determine after reviewing that cabin?

MR. OAKES: Objection, Your Honor.

09:14:04 **Q.** That first cabin.

09:14:04 THE COURT: What's your objection, Mr. Oakes?

09:14:06 MR. OAKES: It -- it's vague, it calls for conclusion.

09:14:10 THE COURT: I'll allow it. But for my own reference, when you say near Route 11, that means on the westerly area of Rice Road?

09:14:19 THE WITNESS: Yeah, I believe so, yeah.

09:14:21 THE COURT: Thank you.

09:14:22 **Q.** What did you determine after viewing that first cabin?

09:14:28 **A.** There were remains of a cabin there.

09:14:30 **Q.** Okay, and did you make any conclusions about whether that may have been involved in this investigation?

09:14:37 **A.** Yes.

09:14:38 MR. OAKES: Objection, Your Honor. I guess if she wants to ask the witness what he did, I have no foundation for this opinion or this conclusion.

09:14:46 THE COURT: Right. I need some foundation for the opinion as to why he has that opinion. Sustained.

09:14:52 **Q.** When you viewed that first cabin, can you describe it for us please?

09:14:57 **A.** It was -- looked like -- looked like a flooring for
09:15:01 a cabin with some other metal and wood on the sides of it.

09:15:07 **Q.** Did you contact any law enforcement agencies with
09:15:11 regards to the first cabin in June of 2014?

09:15:14 **A.** No.

09:15:15 **Q.** Why not?

09:15:16 **A.** Because as I remember, it was reported that there
09:15:22 were no cabins there.

09:15:26 **Q.** So you --

09:15:27 MR. OAKES: Objection, Your Honor. Hearsay.

09:15:29 THE COURT: I'm not sure -- I'm not sure of
09:15:31 the answer.

09:15:32 **Q.** Why didn't you call law enforcement?

09:15:34 THE COURT: Hold on a second. What's your
09:15:36 objection first, Mr. Oakes?

09:15:37 MR. OAKES: My objection is part
09:15:39 non-responsive, and secondly, the witness says it was
09:15:42 reported there were no cabins. It's hearsay. He was
09:15:45 repeating what was reported.

09:15:46 THE COURT: It is hearsay, but maybe you can
09:15:49 ask a clarifying question. I'll sustain on hearsay.

09:15:51 **Q.** With regards to that first cabin in June of 2014,
09:16:00 why didn't you call law enforcement?

09:16:04 **A.** The reason I didn't call I believe now thinking back
09:16:09 here is that there was an individual, Mr. Donegan, over on

09:16:13 Red Mill Road, told -- told me during an interview that that cabin had been demolished prior to Heidi Allen being missing.

09:16:24 **Q.** So you didn't believe that had any relevance?

09:16:26 **A.** I'm not understanding. I'm not sure I understand your question.

09:16:29 **Q.** I believe you stated that -- that that cabin had been destroyed prior to Heidi Allen's abduction.

09:16:37 **A.** Right.

09:16:37 **Q.** Is that the reason you didn't think it was relevant?

09:16:41 **A.** Yes.

09:16:41 MR. OAKES: Your Honor, I was going to object, but I would ask the Court to consider that testimony not for the truth of the matter asserted that it was destroyed before Heidi Allen, but for the impact it had on Mr. Haumann, why he did or did not take certain actions.

09:16:57 THE COURT: I will limit my interpretation of that statement of his testimony.

09:17:00 MR. OAKES: Thank you, Your Honor.

09:17:01 **Q.** Did there come a point when you learned about a second cabin?

09:17:06 **A.** Yes.

09:17:06 **Q.** And how did you find out about that second cabin?

09:17:11 **A.** I received a call or a text, I'm not sure what it

09:17:14 was, I think it was a call from Mr. O'Brien, said that he had information there might be a cabin at the other end of Rice Road.

09:17:22 **Q.** And when was that?

09:17:23 **A.** That was on July twenty-six, it was a Saturday, early evening.

09:17:28 **Q.** And what did you do after receiving that information?

09:17:30 **A.** I had -- I made arrangements with him to meet him there on Sunday.

09:17:35 **Q.** Why would you meet him there? Why did you need him?

09:17:38 **A.** 'Cause I was by myself, had no help.

09:17:41 **Q.** Did you know where the cabin was located?

09:17:43 **A.** At that time, no.

09:17:45 **Q.** Who directed you to the second cabin?

09:17:47 **A.** When I arrived on Rice Road, Mr. O'Brien was there, the owner of the property was there, and I believe there were two photographers were there.

09:17:57 **Q.** And --

09:18:02 MS. BIANCO: Your Honor, may I approach the witness?

09:18:03 THE COURT: Yes.

09:18:24 **Q.** Showing you what's been marked Exhibit 66-A through I believe E --

09:18:40 MR. OAKES: Is that -- I'm sorry, is that E as

09:18:42 in elephant?

09:18:43 MS. BIANCO: E as in elephant.

09:18:49 **Q.** Showing you sixty-six, could you tell us what that
09:18:54 is?

09:18:54 **A.** This is debris of what we saw that day around 1:10
09:19:05 in the afternoon.

09:19:06 **Q.** Of the second cabin?

09:19:07 **A.** Yes.

09:19:07 **Q.** Okay, how about 66-B?

09:19:14 **A.** It's another picture of the debris we saw.

09:19:19 **Q.** 66-C?

09:19:25 **A.** It's a picture of the debris and myself in the
09:19:29 picture.

09:19:29 **Q.** And this is of the second cabin?

09:19:32 **A.** Yes.

09:19:32 **Q.** And what time were those pictures taken
09:19:34 approximately?

09:19:35 **A.** Approximately 1:15 in the afternoon.

09:19:38 **Q.** 66-E, what's that?

09:19:41 THE COURT: Did you do D already?

09:19:45 MS. BIANCO: Oh, I didn't do D.

09:19:48 THE COURT: D typically comes before E.

09:19:50 **Q.** Showing you 66-D, what is that?

09:19:52 **A.** That's me on the phone and the debris.

09:19:55 **Q.** Who are you calling on the phone?

09:19:57 **A.** State Police.

09:19:58 **Q.** Okay, and what time is that taken?

09:20:00 **A.** That's around the same time, 1:15, 1:20.

09:20:04 **Q.** 66-E, what is that?

09:20:09 **A.** More debris.

09:20:12 **Q.** At the second cabin?

09:20:13 **A.** Yes.

09:20:14 **Q.** What time was that taken?

09:20:15 **A.** About the same time.

09:20:17 **Q.** 66-F, what is that?

09:20:20 **A.** That's debris from the same location.

09:20:27 **Q.** And what time was that taken?

09:20:29 **A.** Same time.

09:20:29 **Q.** And were these pictures taken prior to the arrival
09:20:33 of law enforcement?

09:20:34 **A.** Yes.

09:20:35 **Q.** Now, what did you do after you discovered this
09:20:41 second cabin and the pictures were taken? What did you do?

09:20:44 **A.** I called the State Police.

09:20:45 **Q.** Why?

09:20:46 **A.** Before I called State Police, I asked everybody to
09:20:49 back off, stay away from the scene.

09:20:51 **Q.** Why did you do that?

09:20:53 **A.** Why'd I tell them to do that?

09:20:55 **Q.** Yes.

09:20:55 **A.** Because it might have been a crime scene.

09:20:57 **Q.** Okay, and who was present when you told people to stay away?

09:21:00 **A.** There was the owner of the property, John, John O'Brien and his two photographers, there might have been a third but I can't remember exactly, but at least two.

09:21:11 **Q.** How far did you have them back away?

09:21:13 **A.** Quite -- quite a ways.

09:21:15 **Q.** And what did you do after you had them back away?

09:21:18 **A.** Called the State Police, talked to a woman, I'm assuming was a trooper.

09:21:23 **Q.** What happened after that?

09:21:25 **A.** I told her -- I told her what we had and we needed somebody to come to the scene.

09:21:31 **Q.** And when someone -- what time did -- did law enforcement eventually come to the scene?

09:21:38 **A.** It was in the neighborhood I would say 5:30, six o'clock.

09:21:43 **Q.** Did anyone arrive before 5:30 or six o'clock from law enforcement?

09:21:49 **A.** Not from law enforcement, no.

09:21:51 **Q.** From the District Attorney's Office?

09:21:52 **A.** Yes.

09:21:53 **Q.** Who arrived?

09:21:54 **A.** District Attorney, Mr. Oakes.

09:21:57 **Q.** Did anyone, prior to the arrival of law enforcement,
09:22:03 tamper with that scene?

09:22:05 **A.** Not -- not that I can tell you, they were all --

09:22:08 **Q.** On that day.

09:22:09 **A.** They were all backed off.

09:22:11 **Q.** Now --

09:22:12 **A.** I was there present, they were not there. I mean
09:22:14 they were backed off.

09:22:16 **Q.** When you saw the scene, when you first arrived at
09:22:19 that scene, did it appear to be disturbed at all?

09:22:23 MR. OAKES: Objection, Your Honor.

09:22:24 THE COURT: I'll allow it.

09:22:26 **A.** No question about it was very, very fresh, debris
09:22:30 was thrown around, and looked like it partially dug out a
09:22:34 little bit, not too much.

09:22:36 **Q.** And when you say it was very fresh, why do you say
09:22:39 that?

09:22:41 **A.** Because --

09:22:42 MR. OAKES: Objection, Your Honor, foundation
09:22:43 for --

09:22:45 MS. BIANCO: That's what I'm asking.

09:22:47 THE COURT: She's getting to that, yes.

09:22:48 MR. OAKES: Okay.

09:22:49 **A.** Well, I mean it was like fresh dirt, the wood --
09:22:53 wood was thrown out of -- looked like thrown out of the

09:22:57 center of it in that area.

09:22:57 **Q.** Did you see any footprints?

09:22:59 **A.** There was one or two that I saw, yes.

09:23:01 **Q.** And why did you think that those may be fresh?

09:23:04 **A.** 'Cause it had rained recently, they looked fresh.

09:23:09 **Q.** Did anyone disturb that scene in your presence?

09:23:12 **A.** No.

09:23:13 MS. BIANCO: We have a moment, Your Honor?

09:23:17 THE COURT: Sure.

09:23:17 (Whereupon, there was a pause in the
09:23:20 proceeding.)

09:23:20 MS. BIANCO: I have no further questions.
09:23:22 Thank you. Oh, yes, thank you. I'd like to offer the
09:23:34 photos which would be sixty-six -- all of sixty-six.

09:23:39 THE COURT: 66-A through F?

09:23:41 MS. BIANCO: Yes.

09:23:41 THE COURT: Any objection?

09:23:43 MR. OAKES: No, Your Honor.

09:23:44 THE COURT: Okay.

(Defendant's Exhibits 66-A through 66-F were
09:23:48 received in evidence).

09:23:48 THE COURT: Mr. Oakes, are you crossing or Mr.
09:23:49 Moody crossing?

09:23:50 MR. OAKES: I will be, Your Honor, thank you.
09:24:12 Your Honor, can I have Exhibit 35 please?

09:24:15 THE COURT: Right here.

09:24:30 MR. OAKES: Thank you.

09:24:32 CROSS-EXAMINATION

09:24:33 BY MR. OAKES:

09:24:33 **Q.** Good morning, Mr. Haumann.

09:24:35 **A.** Good morning.

09:24:36 **Q.** How are you today?

09:24:41 **A.** Fine.

09:24:43 **Q.** Mr. Haumann, you talked to Ms. Bianco about your law 09:24:54 enforcement experience and your training over the years?

09:24:56 **A.** Um hum.

09:24:57 **Q.** And you talked about going to a number of homicide 09:25:01 scenes.

09:25:01 **A.** Yes.

09:25:02 **Q.** And would you agree that generally when you go to a 09:25:07 scene where you suspect there may be a body or may be 09:25:10 involved in a serious crime, you want to secure the area?

09:25:14 **A.** Right.

09:25:14 **Q.** And conduct a careful forensic review of that area?

09:25:17 **A.** Correct.

09:25:18 **Q.** Now you talked about going to two locations on Rice 09:25:26 Road?

09:25:26 **A.** Yes.

09:25:27 **Q.** We called it cabin number one and the one that's 09:25:31 closer to Route 11 on the western end of Route 11?

09:25:35 **A.** Correct.

09:25:35 **Q.** Now, you had indicated to Ms. Bianco that you have
09:25:41 learned from an individual that that cabin had been
09:25:44 destroyed many years prior to Heidi Allen's disappearance?

09:25:48 **A.** Correct.

09:25:48 **Q.** Did you learn that information before or after you
09:25:52 went to the cabin?

09:25:53 **A.** Before.

09:25:56 **Q.** So when you went to that cabin, you didn't think
09:25:59 there was any -- you didn't think it would actually be
09:26:03 related to this case?

09:26:03 **A.** I didn't think so, no.

09:26:05 **Q.** But even though you didn't think it would be
09:26:08 related, you went to that scene?

09:26:09 **A.** Yes.

09:26:11 **Q.** Okay, and what type of investigation did you conduct
09:26:14 at that scene?

09:26:15 **A.** I pulled up the boards from what was left there.

09:26:21 **Q.** And who did you do that with?

09:26:23 **A.** Myself and the surveyor who was a friend of Mr.
09:26:29 O'Brien's.

09:26:30 **Q.** Now, at the time that you were pulling up the
09:26:32 boards, you thought there was at least a chance that that
09:26:34 cabin might be involved with the Heidi Allen investigation,
09:26:37 correct?

09:26:38 **A.** I wanted to make sure that it wasn't, correct.

09:26:40 **Q.** But you thought it might have been?

09:26:42 **A.** Could have been.

09:26:43 **Q.** Okay. And you didn't have law enforcement with you
09:26:47 at that time did you?

09:26:48 **A.** No.

09:26:48 **Q.** So that examination of that site, did you carefully
09:26:53 diagram it as you would a crime scene before you began
09:26:56 tearing it up?

09:26:57 **A.** No.

09:26:57 **Q.** Did you take photographs documenting the condition
09:27:01 of it before you began tearing it up?

09:27:03 **A.** I believe we did, yes.

09:27:04 **Q.** Okay, do you have those photographs?

09:27:05 **A.** I don't, no.

09:27:07 **Q.** Did you take soil samples or samples of any items
09:27:14 that were there for forensic testing?

09:27:17 **A.** No.

09:27:17 **Q.** And I believe you said Mr. O'Brien was there from
09:27:21 the newspaper?

09:27:21 **A.** Yes.

09:27:22 **Q.** Let me ask you, did you conduct that investigation
09:27:26 of cabin one in the same manner and form as you would have
09:27:29 when you were a police officer?

09:27:30 **A.** No.

09:27:32 **Q.** Why not?

09:27:33 **A.** I thought somebody raised their hand. Why? Because 09:27:38 I didn't believe that was the spot.

09:27:40 **Q.** But you searched it nevertheless.

09:27:42 **A.** Yes.

09:27:42 **Q.** But you were conducting your investigation of that 09:27:51 site related to this case as your duties from the Public 09:27:55 Defender's Office?

09:27:55 **A.** I'm sorry, what was the question?

09:27:56 **Q.** You were searching cabin one in relation to your 09:28:00 duties as the investigator for the Public Defenders?

09:28:04 **A.** No, I was doing it on my own.

09:28:08 **Q.** Did you talk to Ms. Peebles before going there to 09:28:16 that site?

09:28:18 **A.** Probably, yeah, I told her I was probably going to 09:28:23 do that.

09:28:24 **Q.** Okay, did she suggest that you should go out there 09:28:26 or encourage you to go out and look?

09:28:28 **A.** No.

09:28:29 **Q.** You just did it on your own?

09:28:30 **A.** Correct.

09:28:31 **Q.** And you had started looking for a cabin back in the 09:28:38 fall of 2013 and in that wooded area, correct?

09:28:42 **A.** I -- I was actually scoping the area out because I 09:28:46 wasn't very familiar with the area, and there were certain

09:28:48 documents that I'd read that described it to some degree,
09:28:55 yes.

09:28:55 **Q.** And I believe your testimony is you went out three
09:28:55 or four times between the fall of 2013 and the summer of
09:28:59 2014?

09:29:00 **A.** Three or four times in the fall. As the fall went
09:29:05 on, got a little concerned for hunters, but I didn't know
09:29:08 when the hunting season was and I didn't want to be in the
09:29:10 middle of the woods with hunters out and didn't know the
09:29:13 area very well.

09:29:14 **Q.** I completely understand. But in the first three or
09:29:19 four times out, how many hours would you say you spent out
09:29:21 in the woods looking?

09:29:22 **A.** Hours?

09:29:23 **Q.** Yeah.

09:29:23 **A.** I didn't spend hours. I mean checked the area out.
09:29:29 I was waiting for the leaves to fall because I was looking
09:29:31 for a cabin, the leaves were still on the ground or still
09:29:35 on the trees when I started, so I was looking, waiting for
09:29:37 the leaves to drop, and I would check it out when they
09:29:42 started to drop.

09:29:43 **Q.** And I'm not holding you to an exact number, but if
09:29:47 you could ballpark those three or four times, how much time
09:29:50 did you actually spend out there in hours or minutes?

09:29:52 **A.** In the fall I would say probably three to four

09:29:55 hours.

09:29:56 **Q.** And that was the extent of your investigation that
09:30:00 fall?

09:30:00 **A.** For that fall, yes.

09:30:01 **Q.** Now, in the fall of 2013, those three or four hours,
09:30:04 were you doing that work on your own or through your work
09:30:07 at the Public Defender's Office?

09:30:09 **A.** Doing it on my own time.

09:30:11 **Q.** But you were doing it as part of your duties related
09:30:13 to this case.

09:30:14 **A.** No.

09:30:14 **Q.** And so when you found cabin one, you said you tore
09:30:25 up the floor boards, is that correct?

09:30:28 **A.** Yes.

09:30:28 **Q.** Okay, did you use any equipment, any tools when you
09:30:34 were on the scene?

09:30:34 **A.** Yeah. I think I had a shovel and a pickax.

09:30:37 **Q.** Okay, and you used the pickax to tear up the
09:30:41 floorboards and tear up the ground that was there?

09:30:44 **A.** Not the ground, no, just the floorboards.

(People's Exhibit L was marked for
identification).

09:31:52 (People's Exhibit M was marked for
identification).

09:31:53 (People's Exhibit N was marked for

09:31:54 identification).

09:31:54 **Q.** Mr. Haumann, at cabin one when you were doing your
09:31:57 work, you said Mr. O'Brien from the Post-Standard was
09:31:59 there?

09:31:59 **A.** He was present, yes.

09:32:01 **Q.** Were photographs being taken of your work, what you
09:32:04 were working on?

09:32:05 **A.** Yes.

09:32:06 **Q.** And I'm going to show you three photographs that
09:32:08 were taken from the Syracuse.com website. These are marked
09:32:12 as for identification as Exhibits L, M and N. I'm going to
09:32:17 ask you to take a look at those please, sir.

09:32:29 **A.** Okay.

09:32:29 **Q.** Do you recognize those photographs, sir?

09:32:31 **A.** I recognize the person, yeah, that's me.

09:32:34 **Q.** Okay, do those photographs fairly and accurately
09:32:37 depict or show what you were doing at the site of cabin one
09:32:42 in June of 2014?

09:32:43 **A.** Yes, they do.

09:32:45 MR. OAKES: Your Honor, I'd like to offer
09:32:47 these exhibits please.

09:32:49 MS. BIANCO: Could we have a chance to see
09:32:50 them?

09:32:51 MR. OAKES: Certainly. Sorry.

09:33:02 MS. BIANCO: No objection.

09:33:03 THE COURT: Thank you. People's L, M and N are in.
09:33:05

(People's Exhibit L was received in evidence).

(People's Exhibit M was received in evidence).

09:33:05 (People's Exhibit N was received in evidence).

09:33:05 **Q.** Mr. Haumann, Exhibit N that I'm holding in my hand,
09:33:08 sir, that's you with a pickax digging up the floorboards?

09:33:12 **A.** Yes, yep.

09:33:17 MR. OAKES: Your Honor, can I have counsel
09:33:18 approach for a moment please?

09:34:00 (Whereupon, there was an off the record
09:34:06 discussion at the bench.)

09:34:06 **Q.** Now, Mr. Haumann, at the time that you went to the
09:34:12 second cabin, the one that's more on the eastern end of
09:34:15 Rice Road, that was in July of 2014?

09:34:18 **A.** Yeah, July twenty-seventh.

09:34:20 **Q.** And when you went to that site, were you going there
09:34:25 in your role as an investigator for the Federal Public
09:34:29 Defender's Office?

09:34:29 **A.** No, I was off.

09:34:31 **Q.** You were out that day?

09:34:33 **A.** Yeah, Sunday.

09:34:36 **Q.** I -- I was -- well, I realize that may have been a
09:34:41 normal day off.

09:34:42 **A.** Yes.

09:34:43 **Q.** But did you go there as Richard Haumann individual or did you go there as Richard Haumann investigator?

09:34:47 **A.** I believe we were signed in so I'm quite sure I went there probably as the investigator for the Public Defender's Office.

09:34:55 **Q.** So at that time you were there in your role as an investigator?

09:35:01 **A.** Correct.

09:35:02 **Q.** Did you conduct that investigation as you would have when you were on the police force?

09:35:06 **A.** Pretty much. I backed everybody off and called the police, called the State Police, I'm sorry.

09:35:13 **Q.** Did you have any tools with you at that time, any implements?

09:35:18 **A.** I don't -- I don't think I had my tools, I think they were someone else's tools. I think they were the owner's tools. I'm not positive. They might have been my tools, yeah.

09:35:28 **Q.** But did you have them, regardless of who they belonged to, did you have tools with you?

09:35:32 **A.** Yes.

09:35:33 **Q.** Okay, did that include a sledgehammer?

09:35:36 **A.** I don't believe I had a sledgehammer, no.

09:35:38 **Q.** Shovel?

09:35:39 **A.** Shovel probably.

09:35:41 Q. Pickax?

09:35:41 A. Probably.

09:35:42 Q. Okay, but you didn't use any of those items?

09:35:46 A. No.

09:35:47 Q. Now when you got to that scene, that second cabin,
09:35:58 you said you went back with Mr. O'Brien, the property
09:36:01 owner?

09:36:02 A. Yes.

09:36:02 Q. And one or two other photographers?

09:36:04 A. Two or three.

09:36:07 Q. Okay, and at that point, once you discovered the
09:36:10 cabin, you thought it might be related to this case?

09:36:11 A. Yes.

09:36:13 Q. Now once you determined that, did those individuals
09:36:20 stay back in the woods with you, those private citizens?

09:36:24 A. We all came down the hill to the creek and that's
09:36:27 when we made the observation.

09:36:29 Q. Okay. How did you get into that site, did you go
09:36:36 directly from Rice Road into the woods?

09:36:38 A. Um hum.

09:36:38 Q. Okay.

09:36:39 A. Yes.

09:36:40 Q. How long did it take you to get into that cabin?

09:36:44 A. A couple minutes.

09:36:45 Q. Okay, how difficult was it to get to that location?

09:36:48 **A.** I don't know if I understand your question. How
09:36:53 difficult?
09:36:53 **Q.** Yeah.
09:36:54 **A.** It was sort of on a slope if that's what you're
09:36:57 asking me, went down on a hill, was pretty thick, but not
09:37:00 that thick.
09:37:01 **Q.** You were able to get back there within a couple --
09:37:05 I'm sorry, how long did it take you to get back there
09:37:08 again?
09:37:08 **A.** A couple minutes.
09:37:09 **Q.** Okay. So as you moved from Rice Road back to that
09:37:14 location, did you have to go through thick brush?
09:37:23 **A.** I believe, yeah. It's a start point coming down
09:37:28 there, it was pretty thick, and then it opened up a little
09:37:30 bit.
09:37:30 **Q.** And then did you have to go through thick woods?
09:37:34 **A.** I don't even know what thick woods are. I would say
09:37:37 medium to thick, but I'm not really a woodsman, so hard to
09:37:44 describe.
09:37:45 **Q.** Let me ask you. Would you say that you walked so
09:37:47 far and so long that any reasonable person would turn
09:37:49 around?
09:37:52 **A.** Could have been, yeah. I mean there was some
09:37:56 thickness at the -- at the top of the road, I'm sorry, at
09:37:59 the top of the road there was, it was somewhat thick.

09:38:01 **Q.** Okay, did you cross -- did you cross any railroad tracks to get there?

09:38:10 **A.** No.

09:38:11 **Q.** Did you go into a big open field and find the cabin sitting there?

09:38:16 **A.** No.

09:38:17 **Q.** Let me ask you, you said you reviewed some documents, I believe you told Ms. Bianco you reviewed some information I had provided prior to going to those sites?

09:38:28 **A.** Yes.

09:38:28 **Q.** Had you reviewed the statement of Tonya Priest that she had given to State Police describing what James Thumper Steen had told her?

09:38:37 **A.** I reviewed everything that was in the packet including Tonya Priest's affidavit, yes.

09:38:42 **Q.** Okay, so you read her description as to where this cabin was purportedly located?

09:38:50 **A.** Yes.

09:38:50 **Q.** Would you agree, Mr. Haumann, that the site that you went to does not fit the description given in Ms. Priest's account?

09:38:58 **A.** Some of it, that's correct, yes.

09:39:02 **Q.** Again, did you walk through the woods, once you got through the thicket, did you walk through the woods so long that any reasonable person would have turned around, once

09:39:12 you're in the woods?
09:39:14 **A.** No, probably not.
09:39:15 **Q.** And you didn't -- and that's in Ms. Priest's
09:39:18 statement?
09:39:18 **A.** Yes.
09:39:19 **Q.** You didn't cross railroad tracks did you?
09:39:22 **A.** No.
09:39:23 **Q.** And that's in Ms. Priest's statement isn't it?
09:39:25 **A.** Correct.
09:39:25 **Q.** Did you come to a big open or clearing and find the
09:39:28 cabin there?
09:39:28 **A.** No.
09:39:29 **Q.** And that's in Ms. Priest's statement too isn't it?
09:39:32 **A.** Correct.
09:39:32 **Q.** Did you find a wood stove at that location?
09:39:35 **A.** No, I don't believe so.
09:39:37 **Q.** Okay, but according --
09:39:38 **A.** I didn't find a wood stove because I backed off, but
09:39:42 I didn't really know for sure if there was a wood stove
09:39:45 there.
09:39:46 **Q.** But you took photographs of what you could see
09:39:48 there, right?
09:39:48 **A.** I didn't take them, no.
09:39:49 **Q.** Who took the photographs?
09:39:50 **A.** The photographers that were with us.

09:39:52 **Q.** From where?

09:39:52 **A.** From the paper I believe.

09:39:54 **Q.** From Syracuse.com, the Post-Standard?

09:39:56 **A.** Yeah, um hum.

09:39:58 **Q.** So the media was working for you on that day,
09:40:01 provided these photographs to you?

09:40:02 **A.** No. As I told you before, they called me, said
09:40:04 there might be another cabin, I went down there and they
09:40:08 found -- we found a cabin.

09:40:09 **Q.** Mr. Haumann, did you obtain these photos from the
09:40:12 website or did you obtain them directly from the reporter
09:40:15 and the photographer that worked for the Post-Standard?

09:40:18 **A.** I'm not sure where we got them. They're definitely
09:40:22 their -- their photographs.

09:40:23 **Q.** You didn't take any photographs yourself?

09:40:25 **A.** No.

09:40:26 **Q.** Let me ask you, when you were a police officer going
09:40:29 to a crime scene, did you ever leave the scene without
09:40:32 taking any photographs?

09:40:33 **A.** No.

09:40:34 **Q.** So would you say you didn't conduct this --

09:40:37 **A.** I wasn't a police officer so I called the next best
09:40:41 thing, the State Police.

09:40:41 **Q.** But you were there as an investigator weren't you?

09:40:44 **A.** Yes.

09:40:46 **Q.** Now back when you were a police officer did you regularly let reporters and photographers on the crime scenes?

09:40:55 **A.** I hadn't found a crime scene, that's why I backed them off.

09:40:58 **Q.** Well, you believed it was a crime scene?

09:41:00 **A.** Not till I got there --

09:41:01 **Q.** Okay, let me ask you --

09:41:02 **A.** -- then I backed them off.

09:41:04 **Q.** When you were an investigator working for the City of Syracuse --

09:41:06 **A.** Um hum.

09:41:07 **Q.** -- did you ever go to a suspected crime scene and say come on, media, come on in, take photos, did you ever do that?

09:41:14 **A.** No.

09:41:14 **Q.** Okay, so would you agree you didn't conduct this investigation in conformity with your experience and training? Would you agree with that?

09:41:23 **A.** No.

09:41:25 **Q.** Okay.

09:41:26 **A.** I went with the people who called me and told me there might be a cabin. They happened to be the press.

09:41:31 **Q.** Okay, you said you don't recall if you saw a wood stove there?

09:41:36 **A.** I don't recall that, no. I backed off.

09:41:39 **Q.** I'm going to ask you to look at the exhibits, 66-A through F, see if that refreshes your recollection. Do you see a wood stove in any of those photographs?

09:41:52 **A.** All of them? I'm sorry.

09:41:54 **Q.** Look through all of them, tell me if you see a wood stove.

09:41:58 **A.** Not that I can tell, no.

09:42:12 **Q.** Okay. Mr. Haumann, we have been referring to the second site that you went to in July as a, quote, "cabin." Did you actually see a cabin when you got there?

09:42:55 **A.** No. I saw what you see in those pictures.

09:42:58 **Q.** But you --

09:42:58 **A.** But it appeared -- it appeared to be something like that.

09:43:01 **Q.** Okay.

09:43:02 **A.** Never saw it all together, no.

09:43:04 **Q.** Okay, so you don't know whether it was a cabin or a shed or a shack or a kids' fort?

09:43:12 **A.** What's the difference? I don't know the difference. Cabin, could be a kids' fort. I don't know.

09:43:17 **Q.** Okay.

09:43:18 **A.** A structure of some sort apparently at one time from what I could see.

09:43:30 MR. OAKES: Your Honor, I have no further

09:43:32 questions for Mr. Haumann.

09:43:34 THE COURT: Any redirect, Ms. Bianco?

09:43:36 MS. BIANCO: Yes, please, Your Honor.

09:43:56 REDIRECT EXAMINATION

09:43:57 BY MS. BIANCO:

09:43:58 **Q.** Mr. Haumann, Mr. Oakes asked you whether you were
09:44:03 looking for the cabin on your own time, the first cabin.
09:44:08 Why were you doing that?

09:44:11 **A.** Because I've done it on different cases in my
09:44:15 career. Recently as a year ago I was helping with the
09:44:23 Larry Stackhouse case, the missing person.

09:44:25 **Q.** Why would you do it though, why did you care?

09:44:28 **A.** 'Cause that's the way I am.

09:44:29 **Q.** Okay, well, what were you trying to achieve?

09:44:32 **A.** Well, there's -- young girl's been missing for
09:44:35 twenty years. I thought somebody should go looking for the
09:44:39 cabin. It was my understanding that there was no cabin
09:44:42 there per what I saw in the news media and that they
09:44:47 weren't going to search it. It was too vast an area is
09:44:52 what I was told.

09:44:54 MR. OAKES: Objection. Hearsay, Your Honor.

09:44:55 THE COURT: Sustained as to that, as to that
09:44:57 response.

09:44:58 **Q.** Now, Mr. Oakes asked you if you reviewed the
09:45:04 statements of Tonya Priest regarding what Mr. Steen said to

09:45:10 her. You reviewed those, correct?

09:45:12 **A.** Yes.

09:45:12 **Q.** Did it matter to you that the exact description that
09:45:16 Steen told Tonya Priest didn't match what you were seeing?
09:45:20 Did it matter?

09:45:21 **A.** Not really.

09:45:22 MR. OAKES: Objection, leading.

09:45:25 THE COURT: I'll allow it but it is leading.
09:45:27 Just be careful, Ms. Bianco.

09:45:30 **A.** Not really, no.

09:45:31 **Q.** Why not?

09:45:32 **A.** Well, because if there's a cabin there, we should
09:45:35 look for it.

09:45:36 **Q.** When Mr. Oakes was talking about the second scene,
09:45:44 the second cabin, he arrived at approximately what time
09:45:49 during the viewing of the second cabin?

09:45:51 MR. OAKES: Objection. Beyond the scope of
09:45:53 cross.

09:45:54 THE COURT: Sustained.

09:46:01 **Q.** Do you know after you called the State Police
09:46:05 whether they took any pictures of the scene?

09:46:07 MR. OAKES: Objection. Beyond the scope.

09:46:10 MS. BIANCO: He's saying that they didn't
09:46:12 take -- he didn't take any pictures, he didn't do it
09:46:14 according to the investigation.

09:46:15 THE COURT: You raised the issue of photographs. I'll allow that question.

09:46:18 **A.** I don't know if the State Police were on the scene while I was there.

09:46:23 **Q.** Well, why did you call them?

09:46:25 **A.** Because it was reported --

09:46:26 MR. OAKES: Objection. Beyond the scope.

09:46:28 THE COURT: Sustained.

09:46:29 MS. BIANCO: I have no further questions. Your Honor, may we take a five-minute break so I can see if our next witness is present?

09:46:36 THE COURT: I'm going to see if he's going to recross.

09:46:39 MR. OAKES: No, thank you, Your Honor.

09:46:40 THE COURT: Mr. Haumann, you can step down, thank you. You're not going to call Mr. Haumann are you?

09:46:47 MS. PEEBLES: No.

09:46:48 THE COURT: Why don't we just do an even ten-minute break so you can speak to your next witness, okay?

09:46:52 MS. BIANCO: Thank you, Judge.

09:47:03 (Whereupon, there was a recess.)

09:57:31 THE CLERK: Raise your right hand.

09:57:36 RICHARD MURTAUGH, Called as a witness, having

09:57:41 been duly sworn, was examined and testified as follows:

09:57:41 THE CLERK: Please state your name for the record.

09:57:43 THE WITNESS: Richard Murtaugh.

09:57:44 THE CLERK: Spell your last name.

09:57:45 THE WITNESS: M-U-R-T-A-U-G-H.

09:57:49 THE CLERK: Have a seat.

09:57:50 THE COURT: Mr. Murtaugh, for the record, I'm going to ask you do you mind if your testimony is both video and audio taped?

09:57:56 THE WITNESS: Absolutely not. Don't want it.

09:57:58 THE COURT: You're not consenting to it.

09:57:59 THE WITNESS: Right.

09:58:00 THE COURT: Thank you.

DIRECT EXAMINATION

09:58:01 BY MS. BIANCO:

09:58:01 **Q.** Good morning, Mr. Murtaugh. What is your current occupation?

09:58:05 **A.** Scrap processor.

09:58:08 **Q.** And do you own a facility?

09:58:10 **A.** Yes.

09:58:11 **Q.** And what's the name of it?

09:58:12 **A.** Crosby Hill Auto Recycling.

09:58:14 **Q.** And in 1994 who owned it?

09:58:16 **A.** My father.

09:58:17 **Q.** And were you working there?

09:58:19 **A.** Yes.

09:58:19 **Q.** Was there a crusher on the premises in 1994?

09:58:23 **A.** Yes.

09:58:24 **Q.** Do you know a person named James Steen?

09:58:29 **A.** Yes.

09:58:29 **Q.** And how did you know him?

09:58:34 MR. OAKES: Objection, Your Honor.

09:58:35 THE COURT: No, it's a foundational question. 09:58:38 I'll allow it. Go ahead.

09:58:39 **A.** He used to hang around at the racetrack and stuff, 09:58:46 used to help us on the race car and stuff, you know. He 09:58:54 was a neighborhood kid, you know.

09:58:56 **Q.** In 1994, did Roger Breckenridge ever have -- excuse 09:59:02 me, did James Steen ever have a conversation with you or 09:59:07 how many conversations did he have with you regarding Heidi 09:59:10 Allen?

09:59:11 **A.** Zero.

09:59:11 MR. OAKES: Objection, Your Honor. I'm 09:59:14 confused by the question at this point. It was did 09:59:16 you --

09:59:17 MS. BIANCO: Have you ever had a conversation 09:59:18 with James Steen in 1994 or ninety-five about Heidi 09:59:24 Allen.

09:59:27 MR. OAKES: Objection, leading.

09:59:28 THE COURT: Sustained.
09:59:29 **Q.** How many conversation did you have with James Steen
09:59:31 about Heidi Allen?
09:59:32 **A.** Zero.
09:59:33 MR. OAKES: Objection, Your Honor. Assumes a
09:59:34 fact not in evidence.
09:59:35 THE COURT: Sustained. You can get there, Ms.
09:59:36 Bianco, but not this route.
09:59:38 **Q.** Did you ever speak with James Steen during 1994 and
09:59:47 1995, have ever have any conversations with him about
09:59:50 anything?
09:59:50 **A.** Oh, I'm sure, I'm sure I talked to him about stuff.
09:59:54 **Q.** Were any of these conversations related to the
09:59:57 abduction or disappearance of Heidi Allen?
10:00:00 **A.** No.
10:00:01 **Q.** Did James Steen ever come to you and talk about
10:00:07 Heidi Allen and a van?
10:00:09 MR. OAKES: Objection, leading.
10:00:11 THE COURT: Sustained.
10:00:11 **Q.** How many times did James Steen talk to you about
10:00:14 Heidi Allen and a van that -- used to abduct her?
10:00:21 MR. OAKES: Objection.
10:00:22 **Q.** How many times?
10:00:23 MR. OAKES: Objection, Your Honor, assumes
10:00:25 facts not in evidence.

10:00:25 MS BIANCO: He won't let me lay a foundation,
10:00:28 Judge, so I'm having a little trouble here.

10:00:29 THE COURT: Well, you're -- you're asking him
10:00:31 primarily a foundational question and then you add some
10:00:34 additional information on it.

MS. BIANCO: Okay.

10:00:35 THE COURT: Please. So I'm going to sustain
10:00:36 it.

10:00:37 **Q.** Did James Steen ever talk to you about Heidi Allen?

10:00:49 **A.** No.

10:00:51 **Q.** Did you ever have a conversation or what type of
10:00:57 conversation did you have with James Steen about the van
10:01:03 possibly used in the Heidi Allen abduction? How many
10:01:06 conversations did you have with him about that?

10:01:09 MR. OAKES: Objection, Your Honor. The
10:01:10 witness has already testified he never had any
10:01:12 conversations about Heidi Allen.

10:01:15 THE COURT: Sustained.

10:01:16 **Q.** Did you ever have a conversation with James Steen
10:01:19 about a van taken to Canada that he took that may have been
10:01:26 involved in Heidi Allen's disappearance?

10:01:29 **A.** No.

10:01:32 **Q.** Now, I'm going to direct your attention to Roger
10:01:39 Breckenridge. Do you know who he is?

10:01:40 **A.** Yes.

10:01:41 **Q.** And how do you know him?
10:01:44 **A.** Same thing, through the -- through the years,
10:01:47 neighborhood kid.
10:01:48 **Q.** Did he ever work doing scrapping at Murtaugh's
10:01:52 junkyard?
10:01:53 **A.** I don't know if he ever worked there per se, but he
10:01:56 was there a lot.
10:01:57 **Q.** Did you -- did he ever ask you to accompany him to
10:02:03 pick up vehicles?
10:02:06 **A.** Yes.
10:02:08 **Q.** Do you remember an occasion where a vehicle was
10:02:16 picked up from Gary Thibodeau's house?
10:02:18 **A.** Absolutely.
10:02:19 **Q.** Okay, what did Roger Breckenridge tell you about his
10:02:25 permission to take the vehicle?
10:02:27 MR. OAKES: Objection, Your Honor.
10:02:29 THE COURT: Based on?
10:02:30 MR. OAKES: I guess it's asking for hearsay.
10:02:32 What's it being offered for?
10:02:33 THE COURT: Well, I certainly I think it's
10:02:36 hearsay so I'm going to sustain the objection.
10:02:40 MS. BIANCO: Well, it's not offered for the
10:02:41 truth of the matter asserted, just what he was -- what
10:02:45 he heard, what he was told from Roger Breckenridge.
10:02:47 THE COURT: Based upon a conversation, what

10:02:50 did he do with Breckenridge?

10:02:51 **Q.** Based on a conversation with Roger Breckenridge, 10:02:55 what did you do with regard to Gary Thibodeau's van?

10:02:58 **A.** I don't understand what you mean. I'm sorry.

10:03:01 **Q.** That's okay. I'm a little confused myself. When 10:03:08 was Gary Thibodeau's van picked up by you and Roger 10:03:12 Breckenridge?

10:03:14 **A.** Exact date?

10:03:16 **Q.** No, approximate, month, year?

10:03:20 **A.** Sometime after -- I believe he was in jail when it 10:03:25 happened. I -- I can't tell you exact date or anything.

10:03:28 **Q.** Okay, and why did you go to Gary Thibodeau's house 10:03:31 to pick up that van?

10:03:33 **A.** I don't know if I got -- if my boss told me to go 10:03:38 I -- that I'm not sure on how how I ended up there. I 10:03:42 don't know if it was Sharon that called, I don't know if it 10:03:46 was Richard Thibodeau that called or whether it was Roger. 10:03:50 I -- I can't answer that a hundred -- I'm not sure.

10:03:52 **Q.** Was that van operable?

10:03:54 **A.** No.

10:03:55 **Q.** And that was after Gary was already arrested.

10:03:58 **A.** Yes.

10:03:59 **Q.** And did Roger Breckenridge call you a number of 10:04:05 times about picking up vehicles for scrap?

10:04:07 **A.** Hundreds of times.

10:04:08 MS. BIANCO: Thank you. No further questions.

10:04:16 CROSS-EXAMINATION

10:04:17 BY MR. OAKES:

10:04:18 **Q.** Good morning, Mr. Murtaugh.

10:04:36 **A.** Good morning.

10:04:37 **Q.** Do you know a gentlemen by the name of Leland Neadle
10:04:41 or did you know a gentleman by the name of Leland Neadle?

10:04:45 **A.** I don't know him by Leland.

10:04:46 **Q.** How do you know him?

10:04:47 **A.** He used to work with us.

10:04:48 **Q.** Okay, what did he go by?

10:04:50 **A.** Lee.

10:04:51 **Q.** Okay.

10:04:53 MS. BIANCO: Objection. Beyond the scope of
10:04:55 direct examination.

10:04:55 THE COURT: Sustained.

10:04:58 **Q.** Mr. Murtaugh, you had indicated that you went to
10:05:05 Gary Thibodeau's house and removed a van from that
10:05:08 property?

10:05:09 **A.** Correct.

10:05:09 **Q.** How do you know it was Gary Thibodeau's property?

10:05:13 **A.** I'm not sure if when we pulled in, if I seen it on
10:05:19 the mailbox or if Roger said this is Gary Thibodeau's
10:05:23 house.

10:05:24 **Q.** Okay, where was that property located?

10:05:27 **A.** I don't know the name of the road. I can drive you right to it.

10:05:31 **Q.** Okay, well, let me ask you if I said Kenyon Road, does that refresh your recollection or not?

10:05:36 **A.** If that's where he lived, yeah.

10:05:37 **Q.** Okay, do you know what township that was in?

10:05:39 **A.** Mexico.

10:05:41 **Q.** Okay. And but you saw the name Breck -- I'm sorry, you saw the name Thibodeau on the mailbox?

10:05:50 **A.** I have been -- you got to remember this was a long time ago. I'm trying to picture -- something tells me there was a white mailbox but I could be wrong. I -- I don't know.

10:06:02 **Q.** Okay.

10:06:03 **A.** I don't know.

10:06:05 **Q.** That's fine. Mr. Murtaugh, if you are not sure of an answer, again, we don't want you guessing, either me or Ms. Bianco.

10:06:11 **A.** Okay, yep.

10:06:12 **Q.** But you and Roger Breckenridge went to a location in Mexico and picked up a van?

10:06:19 **A.** Correct.

10:06:20 **Q.** And your belief that it was Gary Thibodeau's van on his property?

10:06:25 **A.** Correct.

10:06:25 **Q.** Was there anybody else with you?

10:06:25 **A.** Yes.

10:06:26 **Q.** Who was that?

10:06:26 **A.** My girlfriend.

10:06:28 **Q.** And who was that at the time?

10:06:29 **A.** Dawn Delacruz.

10:06:31 **Q.** And are you still with Ms. --

10:06:32 **A.** Yes.

10:06:32 **Q.** Delacruz, still with her?

10:06:34 **A.** Yes. Twenty-six years.

10:06:50 **Q.** Now did you remove just one vehicle from the
10:06:53 property or more than one vehicle?

10:06:54 **A.** I believe I removed two, but it's been so long I --
10:07:00 I really -- I can't tell you a hundred percent.

10:07:02 **Q.** Okay, but you do recall removing a van?

10:07:05 **A.** Yes, a blue one.

10:07:06 MR. OAKES: Your Honor, may I approach please?

10:07:08 THE COURT: Sure.

10:07:13 **Q.** Mr. Murtaugh, I'm going to hand you what's been
10:07:16 marked for identification as People's Exhibit A and ask you
10:07:17 to take a look at this. First, what I handed you is an
10:07:24 evidence bag. What's inside the evidence bag?

10:07:27 **A.** Picture.

10:07:27 **Q.** Okay, and do you recognize what's shown in that
10:07:29 photograph?

10:07:30 **A.** Yes.

10:07:30 **Q.** What is it?

10:07:31 **A.** It's a Cadillac, box van and a regular van.

10:07:39 **Q.** And what color is that regular van?

10:07:41 **A.** Blue.

10:07:42 **Q.** Do you recognize that van?

10:07:43 **A.** That's the one I picked up.

10:07:44 **Q.** And is that van in the same condition as it was at
10:07:47 the time that you picked it up?

10:07:48 **A.** Yeah.

10:07:49 **Q.** Does that photo fairly and accurately show the
10:07:54 condition of the van at the time that you --

10:07:55 **A.** Yes. It was a junk van.

10:08:00 MR OAKES: Your Honor, at this time the People
10:08:02 would offer Exhibit I.

10:08:04 MS. BIANCO: No objection.

10:08:05 THE COURT: Exhibit I is in without objection.

10:08:07 (People's Exhibit I was received in evidence).

10:08:07 **Q.** Mr. Murtaugh, when you first got to the property to
10:08:10 get the van, what -- well, what type of vehicle did you
10:08:13 take to get the van?

10:08:14 MS. BIANCO: I'm sorry, I didn't hear the
10:08:16 question. Greg, is your mike on because we're having a
10:08:18 hard time hearing it.

10:08:41 (Whereupon, there was a pause in the

10:08:43 proceeding.)

10:08:43 **Q.** Mr. Murtaugh -- Mr. Murtaugh, what type of vehicle did you take to pick up the van?

10:08:55 **A.** Rollback.

10:08:56 **Q.** And can you describe that type of vehicle for the Court if you would please?

10:09:01 **A.** It was an older GMC, flatbed, rolled down with a winch on it.

10:09:11 **Q.** And when you got -- how did you get to the van on the property? How did you get in there?

10:09:15 **A.** Had to back in the driveway, way up in there.

10:09:18 **Q.** And once you got to the vehicle, what did you do, what is your role?

10:09:22 **A.** I think I hooked or engaged the PTO and then run out and run the levers.

10:09:30 **Q.** Okay.

10:09:32 **A.** Wow, that's loud.

10:09:35 **Q.** And Mr. Murtaugh, what was the condition of the van when you first saw it?

10:09:39 **A.** Junk.

10:09:40 **Q.** Okay, let me ask you were the doors open, closed?

10:09:43 **A.** Closed.

10:09:44 **Q.** Before you loaded the van up onto the truck, did you look inside the van?

10:09:49 **A.** No.

10:09:50 **Q.** So once you got it loaded up on the truck, let me ask you did anybody look inside the van while it was still on Mr. Thibodeau's property if you know?

10:09:58 **A.** I don't think so, but I can't tell you with a hundred percent certainty.

10:10:04 **Q.** Okay, so once you got the van loaded up on your truck, where did you take it?

10:10:09 **A.** Back to Crosby Hill.

10:10:11 **Q.** And that was your dad's place at that point?

10:10:12 **A.** Yes.

10:10:13 **Q.** And once you got back to Crosby Hill, what did you do?

10:10:17 **A.** We went through it.

10:10:20 **Q.** And when you say "we went through it," what does that mean?

10:10:24 **A.** Me, Dawn and Roger.

Q. And --

10:10:28 MS. BIANCO: I'm going to object to what they did when they got the van back to Crosby Hill. That's beyond the scope of direct.

10:10:33 THE COURT: The van issue was brought up on direct. I'll allow it.

10:10:38 **Q.** And when you -- did you open up the van and go through it?

10:10:41 **A.** Yes.

10:10:42 **Q.** And what -- what if anything did you see when you opened it up?

10:10:45 **A.** Rolled up carpet and some boxes.

10:10:50 **Q.** Now, when you talk about a rolled up carpet, was it tightly rolled, loosely rolled? Could you describe it for the Court?

10:10:58 **A.** Well, how -- I mean it was a roll of carpet about like this (indicating), and it went from the back door almost to the front door. Well, to the back of the front seats.

10:11:10 MR OAKES: And Your Honor, the witness held his hands out a distance. Ms. Peebles, would you agree that's about sixteen to eighteen inches or wider? What's your guess?

10:11:20 MS. PEEBLES: I don't know. Whatever.

10:11:22 THE COURT: Two feet.

10:11:24 MR. OAKES: Two feet. There we go.

10:11:26 **Q.** And once you -- once you got the van there, you saw the carpet, what'd you do with the carpet?

10:11:33 **A.** Just left it in there.

10:11:35 **Q.** Okay, what did you do with the van at that point?

10:11:39 **A.** Once we realized there was nothing in there of any -- any value or nothing, you know, with Ms. Allen, I mean we did it like we normally do, you know, rolled it over on its side, you know, took the fuel tank out, you

10:11:58 know, and rolled it back over, ripped the roof off from it,
10:12:02 filled it up with tin and crushed it.

10:12:05 **Q.** Mr. Murtaugh, you made a statement, "Once we saw it
10:12:08 had nothing to do with Ms. Allen," could you clarify for
10:12:12 the Court what do you mean by that?

10:12:13 **A.** Well, as soon as we -- we realized that it was
10:12:17 Thibodeau's van, you know, soon as we realized it was
10:12:22 there, you know, we all started thinking, you know --

10:12:24 **Q.** Well, not what other people were thinking, what were
10:12:27 you thinking?

10:12:27 **A.** I was thinking --

10:12:29 MS. BIANCO: Objection to what he was thinking
10:12:31 at the time, Judge.

10:12:31 THE COURT: No, I'm going to allow it.

10:12:32 **Q.** What were you thinking, Mr. Murtaugh?

10:12:34 **A.** Well, it was a van, you know, and they -- they, you
10:12:39 know, were charged with -- with kidnapping her with -- in a
10:12:42 van, you know.

10:12:44 **Q.** And so was there any discussion at that point
10:12:46 between the parties that were present of jeeze, I wonder if
10:12:49 this had anything to do with her kidnap?

10:12:52 **A.** Oh, definitely.

10:12:53 **Q.** But to your knowledge, Ms. Allen was not inside that
10:12:58 van.

10:12:58 **A.** Absolutely not.

10:12:59 **Q.** To your knowledge, that van have anything to do with
10:13:02 her abduction?

10:13:03 **A.** Absolutely not.

10:13:05 **Q.** And when you guys were having this discussion about
10:13:10 could it be related to Heidi Allen, who was present?

10:13:12 **A.** The three of us.

10:13:13 **Q.** Could you repeat that again, who was the three of
10:13:15 you?

10:13:15 **A.** Roger, Dawn and myself.

10:13:17 **Q.** Did you ever talk about that van or taking that van
10:13:25 off of Thibodeau's property with anyone else after that
10:13:28 date?

10:13:28 **A.** The sheriffs come a while later.

10:13:30 **Q.** Okay, and do you remember who it was from the
10:13:34 Sheriff's Department?

10:13:34 **A.** And let me back you up one second. And Gary's
10:13:39 girlfriend Sharon also had called on the van.

10:13:43 **Q.** Okay, is that Sharon Riposa (ph)?

10:13:48 **A.** Yes.

10:13:49 **Q.** What did she call about the van?

10:13:51 MS. BIANCO: Objection to what Sharon Riposa
10:13:53 is saying now.

10:13:54 THE COURT: That's not what he asked. It is
10:13:56 beyond the scope though of direct. Don't answer the
10:13:59 question.

10:14:13 **Q.** Mr. Murtaugh, that particular van that you moved off from Gary Thibodeau's property, it was ultimately crushed up?

10:14:21 **A.** Yes, sir.

10:14:21 **Q.** Do you know where it was shipped to?

10:14:24 **A.** Either Lasco (ph) or Sitbeck (ph). They were scrap -- they're scrap shredders in Canada, and they were paying the most for vehicles back then.

10:14:34 **Q.** Okay, and what cities in Canada are those relating to or are they near?

10:14:39 **A.** I'm not really sure. I -- something tells me Montreal but I could be wrong.

10:14:46 **Q.** Was it unusual at that time for you to haul loads into Canada?

10:14:49 **A.** Absolutely not. It was probably fifteen loads a week went there.

10:14:55 **Q.** Now, Mr. Murtaugh, a moment ago you said you spoke with police about removing that van from Mr. Thibodeau's property?

10:15:06 **A.** Yes, sir.

10:15:06 **Q.** Was that the Sheriff's Department?

10:15:07 **A.** Yes, sir.

10:15:08 **Q.** And do you recall who you spoke with?

10:15:11 **A.** No, sir, I don't. I believe it was a couple investigators. I believe they were in suits.

10:15:19 **Q.** Okay.

10:15:19 **A.** That's all.

10:15:21 **Q.** Do you remember when that was ballpark?

10:15:23 **A.** It was quite a while after everything, quite a while after.

10:15:27 **Q.** Okay, and had Gary Thibodeau gone to trial yet?

10:15:30 **A.** Oh, definitely. That was all over and done with.

10:15:34 MR OAKES: Can I have a moment, Your Honor?

10:15:41 THE COURT: Sure.

10:15:41 (Whereupon, there was a pause in the proceeding.)

10:15:59 THE WITNESS: Could I have a minute to speak with my attorney?

10:16:02 THE COURT: Sure.

10:16:02 MR. OAKES: Actually, Your Honor, I have no further questions at this point. Do you have redirect?

10:16:09 MS. PEEBLES: Just a couple questions.

10:16:10 THE COURT: He's requested to speak to his attorney, so yes, why don't you guys step out and speak to your attorney.

10:16:15 THE WITNESS: Thank you.

10:16:23 (Whereupon, there was a pause in the proceeding.)

10:17:11 THE WITNESS: Sorry.

10:17:12 THE COURT: Don't apologize. We're back on

10:17:15 the record. Mr. Thibodeau, I'm sorry, I apologize, Mr.
10:17:19 Murtaugh, you had time to speak to your attorney?

10:17:20 THE WITNESS: Yes.

10:17:21 THE COURT: Consider the fact that you're
10:17:22 still under oath, sir, okay?

10:17:23 THE WITNESS: Yep.

10:17:24 THE COURT: Ms. Bianco.

10:17:27 REDIRECT EXAMINATION
10:17:28 BY MS. BIANCO.

10:17:30 **Q.** I just want to -- I just want to clarify a couple
10:17:42 things, Mr. Murtaugh. When you and Mr. Breckenridge went
10:17:47 to pick up the van at Gary Thibodeau's house, he was
10:17:50 already incarcerated?

10:17:51 **A.** Yes.

10:17:52 **Q.** And that crime scene so to speak had already been
10:17:58 released?

10:17:59 **A.** There was no yellow tape if that's what you mean.

10:18:02 **Q.** Okay, and you had no reason to believe that that van
10:18:05 was of any value to anyone at that time, correct?

10:18:12 MR. OAKES: Objection, Your Honor.

10:18:14 THE COURT: I'll allow it.

10:18:15 **Q.** You had no reason to believe that that van was of
10:18:18 value to the police.

10:18:19 **A.** Oh, no, no. I figured that they had already
10:18:21 searched it, the whole nine yards, yeah, no.

10:18:24 **Q.** And Roger didn't tell you whether or not he was stealing that particular van did he? 10:18:28

10:18:30 **A.** Absolutely not.

10:18:31 **Q.** Okay, and had he told you he was going there without anyone's permission, would you have took it? 10:18:35

10:18:37 **A.** Absolutely not.

10:18:38 MR. OAKES: Objection.

10:18:38 THE COURT: Sustained.

10:18:39 MR. OAKES: Speculative.

10:18:41 MS. BIANCO: No further questions, thank you.

10:18:42 THE COURT: Any recross?

10:18:44 MR. OAKES: No.

10:18:45 THE COURT: Mr. Murtaugh, you may step down, sir. 10:18:47

THE WITNESS: Thank you.

10:18:48 THE COURT: Do you need a couple minutes before your next witness? 10:18:49

10:18:51 MS. PEEBLES: I think we have our next witness here, Judge. 10:18:53

10:18:54 THE COURT: Okay. Ms. Bianco, are we ready?

10:19:43 MS. BIANCO: I am, Judge. Thank you.

10:19:45 THE COURT: Who is your next witnesses?

10:19:47 MS. BIANCO: Megan Shaw.

10:19:48 THE COURT: Megan Shaw please. Do we anticipate Ms. Shaw will be the last for the morning? 10:20:03

10:20:06 MS. PEEBLES: I think.

10:20:07 THE COURT: When did you ask Investigator
10:20:08 Pietroski to be here?

10:20:10 MS. PEEBLES: I was thinking I would have him
10:20:11 at eleven, Your Honor.

10:20:12 THE COURT: Sure.

10:20:13 MS. PEEBLES: I was trying to be ambitious
10:20:16 but --

10:20:16 THE COURT: Okay. The witness needs a couple
10:21:05 minutes.

10:21:06 MR. OAKES: Your Honor, may we approach
10:21:08 please?

10:21:09 THE COURT: Yes.

10:21:11 (Whereupon, there was an off the record
10:21:12 discussion at the bench).

10:22:37 THE COURT: We're in a ten-minute recess.
10:22:40 Thank you.

10:22:40 (Whereupon, there was a recess.)

10:35:27 THE COURT: Please be seated.

10:35:36 MS. BIANCO: Judge, I think you -- is my mike
10:35:39 on?

10:35:39 THE COURT: No, they're off. Now they're on.

10:35:41 MS. BIANCO: The defense would call Megan
10:35:53 Shaw.

10:35:53 THE CLERK: Raise your right hand, put your

10:36:01 left on the Bible.

MEGAN SHAW, Called as a witness, having been duly
10:36:04 sworn, was examined and testified as follows:

10:36:04 THE CLERK: Please state your name for the
10:36:12 record.

10:36:12 THE WITNESS: Megan Irene Shaw.

10:36:14 THE CLERK: Spell your last name.

10:36:15 THE WITNESS: S-H-A-W.

10:36:17 THE CLERK: Have a seat please.

10:36:18 THE COURT: Ms. Shaw, before we start, I'm
10:36:20 going to ask you whether or not you consent to having
10:36:23 your testimony video and audio taped.

10:36:26 THE WITNESS: No.

10:36:26 THE COURT: You do not.

10:36:27 THE WITNESS: No.

10:36:27 THE COURT: Okay. Secondly, I'm going to ask
10:36:29 you to make sure you speak loudly enough so the back
10:36:31 wall in this courtroom can hear you, okay. A little
10:36:34 louder.

10:36:34 THE WITNESS: Sorry.

10:36:35 THE COURT: Thank you. Ms. Bianco.

DIRECT EXAMINATION

10:36:37 BY MS. BIANCO:

10:36:38 **Q.** Megan, are you a little nervous about being here
10:36:41 today?

10:36:41 A. Extremely.

10:36:42 Q. Okay, do you want to be here today?

10:36:45 A. No.

10:36:45 Q. You have to speak up just a little bit.

10:36:47 A. Sorry. No.

10:36:48 Q. Okay, how old are you?

10:36:50 A. Twenty-eight.

10:36:51 Q. And do you currently live in Oswego County?

10:36:54 A. Yes.

10:36:55 Q. You're going to have to speak up just a little bit
10:36:58 louder. I know it's tough.

10:36:59 A. Yes, sorry.

10:37:00 Q. How long have you lived in Oswego?

10:37:02 A. About eight years.

10:37:04 Q. Are you married?

10:37:05 A. Yes.

10:37:05 Q. Who are you married to?

10:37:07 A. Sidney Ruben Shaw.

10:37:09 Q. Is that his real name?

10:37:10 A. Yes.

10:37:10 Q. And how long have you been married?

10:37:12 A. Four years this February.

10:37:14 Q. Do you know a person named James Steen?

10:37:17 A. Yes.

10:37:17 Q. And how do you know James Steen?

10:37:20 **A.** Through my husband.

10:37:21 **Q.** When is the first time you met Mr. Steen?

10:37:25 **A.** About ten years ago.

10:37:26 **Q.** Does he have a nickname?

10:37:28 **A.** Thumper.

10:37:29 **Q.** Okay. And did you know his -- his wife Vickie
10:37:34 Steen?

10:37:34 **A.** Yes.

10:37:34 **Q.** How long did you know her?

10:37:36 **A.** About the same period.

10:37:39 **Q.** In February of 2010, were you aware that Mr. Steen
10:37:48 and Vickie Steen split up?

10:37:49 **A.** Yep.

10:37:50 **Q.** And how often would you see Mr. Steen after the
10:37:54 breakup in February of 2010?

10:37:56 **A.** Periodically he'd come over.

10:37:59 **Q.** And come over where?

10:38:00 **A.** To our residence.

10:38:02 **Q.** And where was that?

10:38:03 **A.** Parish, Dutch Hill Road in Parish.

10:38:06 **Q.** Okay, and you were living there in -- in February of
10:38:10 2010?

10:38:11 **A.** Yep.

10:38:11 **Q.** And who was living in that residence?

10:38:16 **A.** Me, my husband and our children.

10:38:17 **Q.** And how often -- when you say he came over at times, how often? Once a month, once a week?

10:38:25 **A.** Maybe two, three times a week.

10:38:27 **Q.** Okay, and after James Steen and Vickie split up, did James Steen ever talk to you about Heidi Allen's disappearance?

10:38:39 **A.** Yes.

10:38:40 **Q.** What did he say?

10:38:43 **A.** He came to us freaking out about Vickie leaving him, and he ended up telling me he was going to kill her, and I didn't believe him, and he said, "You want to make a bet? I disposed of Heidi Allen's body."

10:38:56 MR. OAKES: Objection.

10:38:57 THE COURT: Hold on. What's your objection?

10:38:58 MR. OAKES: Actually withdraw the objection, Your Honor. Initially it wasn't responsive to the question but she's getting to it.

10:39:04 THE COURT: Okay.

10:39:04 **Q.** I'm sorry, Megan. Could you repeat that? You didn't do anything wrong.

10:39:08 **A.** He said that he was going to kill Vickie, and I didn't believe him, and he said, "You want to make a bet? I helped dispose of Heidi Allen's body."

10:39:17 **Q.** Did he tell you why he did something with Heidi Allen's body?

10:39:21 **A.** He told me he just helped dispose of her body to be
10:39:26 part of the gang.

10:39:27 **Q.** What gang is that?

10:39:29 **A.** The VC.

10:39:30 **Q.** Okay, and why did he need to help dispose of her
10:39:35 body? Why was -- why was she involved in any of this, did
10:39:38 he say?

10:39:38 **A.** She had a boyfriend at the time who was -- who was
10:39:43 according to him part of the VC and he wanted out.

10:39:47 **Q.** Okay, and what did he say regarding Heidi and why
10:39:52 she might have been the one to be targeted to be killed?

10:39:54 **A.** Because she went to somebody for help to get her
10:39:58 boyfriend out of the VC and apparently went to the wrong
10:40:02 person.

10:40:02 **Q.** Is that what James Steen told you?

10:40:04 **A.** That's what he said.

10:40:05 **Q.** Did he say who killed Heidi Allen?

10:40:15 **A.** He never gave me any names.

10:40:17 **Q.** Did he say what -- did he say he was involved
10:40:24 with -- with the killing or the disposal?

10:40:26 **A.** With the killing, no, but with the disposal, yes.

10:40:29 **Q.** Okay, what did he say in regards to the disposing of
10:40:34 Heidi Allen's body?

10:40:35 **A.** He started telling me that he helped some other
10:40:39 people, he never gave me any names, but helped other people

10:40:43 dispose her body in a cabin in Parish off of sixty-nine. 10:40:48 Parts of her are underneath floorboards, outside and in a 10:40:52 wood stove.

10:40:53 **Q.** Did he offer to show you the location?

10:40:55 **A.** He pulled it up on his phone.

10:40:57 **Q.** Okay.

10:40:58 **A.** Pulled a picture, showed me the cabin and everything 10:41:01 in the woods.

10:41:03 **Q.** And did he say anything about what happened to Heidi 10:41:06 Allen's body?

10:41:07 **A.** Just that she was chopped up into pieces and 10:41:10 disposed around this cabin and in the cabin.

10:41:14 **Q.** Did he say where in the cabin her remains were put?

10:41:17 **A.** Underneath the floorboard, the wood stove, and then 10:41:20 the rest were scattered outside of the cabin.

10:41:23 **Q.** Did you ever have a -- this is the first 10:41:26 conversation. Do you remember approximately when that 10:41:28 conversation was between February and September, 2010 10:41:32 approximately?

10:41:32 **A.** Around May.

10:41:33 **Q.** Okay, did he ever have a second conversation with 10:41:38 you regarding Heidi Allen?

10:41:39 **A.** Yes.

10:41:39 **Q.** And when was that?

10:41:41 **A.** It was Father's Day. He showed up to pick his car

10:41:46 up in the morning and told me he was going to kill Vickie and I didn't believe him.

10:41:50 **Q.** What did you say?

10:41:51 **A.** I said, "Yeah, right. You're not going to kill Vickie, you're just mad."

10:41:55 **Q.** And how did he respond?

10:41:57 MR. OAKES: Objection, Your Honor.

10:41:57 THE COURT: Hold on. What's your objection?

10:41:59 MR. OAKES: I thought the question was going to be tied to Ms. Allen.

10:42:04 THE COURT: Tie it in.

10:42:06 MS. BIANCO: I'm tying it in right now.

10:42:09 THE COURT: Let her tie it in.

10:42:09 **Q.** I'm sorry, what did you say when he said he was goings to kill Vickie?

10:42:12 **A.** I told him I didn't believe him, he was just mad.

10:42:15 **Q.** And how did he respond?

10:42:16 **A.** He said, "Yeah, right. I showed you what I did with Heidi."

10:42:20 **Q.** Was James Steen a drug user to your knowledge?

10:42:26 **A.** Yes.

10:42:26 **Q.** What drugs did he use?

10:42:27 **A.** To my knowledge marijuana.

10:42:31 **Q.** In May second, 2013, were you approached by the police to speak with your -- to speak about your

10:42:40 conversations with James Steen?

10:42:42 **A.** Yes.

10:42:42 MR. OAKES: Objection, Your Honor, relevance.

10:42:45 THE COURT: I'll allow the question. If she
10:42:46 starts asking what the police said, then I'll have a
10:42:49 problem.

10:42:49 **Q.** Who did you speak to?

10:42:50 **A.** Investigator Pietroski and Investigator Moody.

10:42:56 **Q.** And did you tell them what you're telling us here
10:43:00 today?

10:43:01 **A.** Yes, I did.

10:43:01 MR. OAKES: Objection, Your Honor, improper
10:43:03 bolstering.

10:43:04 THE COURT: I'm going to sustain it.

10:43:06 **Q.** What were you told in regards to your information?

10:43:09 MR. OAKES: Objection, Your Honor. Relevance
10:43:11 to what the police told her.

10:43:15 THE COURT: I'm not sure what the relevance
10:43:17 is, but it's hearsay so I'm going to sustain.

10:43:19 MS. BIANCO: Well, it's not offered for the
10:43:20 truth of the matter asserted, it's offered to show what
10:43:23 they did with her information and how they treated her
10:43:25 in regards to her information.

10:43:27 THE COURT: Why don't you ask her how did they
10:43:29 treat her.

10:43:29 **Q.** How did they treat you in regards to your information?

10:43:32 MR. OAKES: Objection, Your Honor, relevance.

10:43:33 THE COURT: How's it relevant now at this point?

10:43:34 MS. BIANCO: Well, Your Honor, when they told her she was a liar and they knew people that lived in that house and what she's saying couldn't be the truth, they were trying to dissuade her from coming forward or saying anything further. That's how it's relevant.

10:43:46 THE COURT: Mr. Oakes, your response to that?

10:43:48 MR. OAKES: Your Honor, that one, assumes facts not in evidence. Two, even if the police did those things, how is that relevant to this court making a determination?

10:44:02 THE COURT: I'm going to sustain the objection.

10:44:04 MS. BIANCO: I have no further questions. Thank you, Megan. Mr. Oakes is going to ask you a few questions now.

10:44:09 THE WITNESS: Okay.

10:44:10 THE COURT: Ms. Shaw, do you need a minute or are you all right?

10:44:12 THE WITNESS: I'm okay.

10:44:13 THE COURT: Do you want some water?

10:44:14 THE WITNESS: No.

10:44:15 THE COURT: Okay.

10:44:21 CROSS-EXAMINATION

10:44:22 BY MR. OAKES:

10:44:23 **Q.** Good morning, Ms. Shaw.

10:44:28 **A.** Hi.

10:44:29 **Q.** How are you today?

10:44:30 **A.** Nervous.

10:44:31 **Q.** That's okay. Ms. Shaw, I just want to clarify 10:44:37 something for the record. You said you spoke with an 10:44:40 Investigator Moody in May of 2013?

10:44:43 **A.** Um hum.

10:44:43 **Q.** Okay, this gentleman sitting right here?

10:44:46 **A.** That's not the same one.

10:44:47 MR. OAKES: Okay, I just wanted to clarify for 10:44:51 the record. For the record, I was pointing to my chief 10:44:53 assistant, Mark Moody.

10:44:56 **Q.** Now, Ms. Shaw, you talked about the conversation 10:45:01 that you had with James Steen in May of 2010?

10:45:06 **A.** Um hum.

10:45:07 **Q.** Do you recall that conversation?

10:45:08 **A.** Yes.

10:45:08 **Q.** When you heard that conversation, did you believe 10:45:15 what he was telling you?

10:45:16 **A.** No.

10:45:17 **Q.** Why not?

10:45:19 **A.** Because Jay has never -- he's always portrayed himself as a big teddy bear, nobody -- like he could do no harm to anybody.

10:45:27 **Q.** And so at that point did you basically kind of laugh it off or shrug it off?

10:45:33 **A.** I did until he showed -- until he pulled it up on his phone.

10:45:37 **Q.** Okay, well, and again, what was that location that he showed you on the phone?

10:45:40 **A.** It was a cabin in the woods off of Route 69 in Parish behind a house.

10:45:47 **Q.** Okay, was that near the storage sheds?

10:45:51 **A.** Across the road from the storage.

10:45:53 **Q.** What -- what corner does that sit on for the storage sheds, Route 69 and --

10:45:59 **A.** I'm not sure the names of the roads.

10:46:01 **Q.** Okay, and but you were living in Parish at the time?

10:46:06 **A.** Dutch Hill Road, yes.

10:46:10 **Q.** How far is it from Dutch Hill Road?

10:46:12 **A.** You go down the road, a stop sign and take a left, and it's maybe not even a half mile down the road.

10:46:17 **Q.** And that's basically a few miles, at least a few miles east of Parish?

10:46:23 **A.** Yes.

10:46:23 Q. Did he say anything to you about Rice Road?

10:46:28 A. No.

10:46:28 Q. Mexico?

10:46:29 A. Never.

10:46:29 Q. No mention of it whatsoever?

10:46:31 A. No.

10:46:32 Q. Now, you said Mr. Steen told you that a gang, this
10:46:40 gang took Ms. Allen. When did he tell you they took her?

10:46:44 A. Around her disappearance, that they took her from
10:46:47 her work.

10:46:48 Q. Okay, and did he tell you they took her at night?

10:46:52 A. It was dark out, he didn't really specify whether it
10:46:56 was p.m. or a.m., it's just that it was no daylight.

10:47:02 Q. And just to be clear, during this conversation he
10:47:04 never mentioned the name Roger Breckenridge, correct?

10:47:06 A. He never mentioned any names.

10:47:08 Q. Never mentioned Michael Bohrer?

10:47:09 A. No.

10:47:10 Q. But he was talking about the gang, and you used the
10:47:12 term VC. What does that refer to?

10:47:14 A. Vicious Circle.

10:47:15 Q. Okay, and what is Vicious Circle?

10:47:18 A. It's a bike gang.

10:47:20 Q. And when you say bike, motorcycle club?

10:47:24 A. Yes.

10:47:24 **Q.** And when he was talking about the gang, did he -- did he actually say the words VC or Vicious Circle?

10:47:32 **A.** He didn't 'cause at that time we had been talking -- a few people had been talking about the VC, so we just called them the gang instead of VC because of the kids always being around.

10:47:44 **Q.** So when you talk about -- a few people were talking about it, can you explain that? I just want to understand how you made that conclusion.

10:47:52 **A.** Well, my husband's ex-wife had married somebody who was part of the gang.

10:47:58 **Q.** Okay, and who was -- who is your husband's ex-wife?

10:48:01 **A.** Tonya Priest.

10:48:03 **Q.** Okay, and who was her husband?

10:48:04 **A.** At that time, William Priest.

10:48:07 **Q.** And he was part of Vicious Circle?

10:48:09 **A.** Yes.

10:48:09 **Q.** But how did the conversations come up at that point?

10:48:11 **A.** Because she just -- she had issues with him being part of 'em, so from time to time we would all just discuss what she would complain about.

10:48:20 **Q.** Okay. Now, the conversation that you had with Thumper in May of 2010, did that occur after Wayne had died, Wayne Priest had died?

10:48:31 **A.** I want to say yes. I'm not exactly positive.

10:48:34 **Q.** Okay. Well, during your conversations with Ms. --
10:48:39 again, you said the reason you believed Thumper was
10:48:42 referring to the VC was because of conversations with Tonya
10:48:44 Priest, is that fair?
10:48:45 **A.** Yeah.
10:48:46 **Q.** So what were those conversations with Tonya Priest?
10:48:49 **A.** Her complaining about people coming over to her
10:48:54 house that were friends with Wayne, part of the gang, them
10:48:57 coming over and just being around the kids, doing what they
10:49:00 were doing.
10:49:00 **Q.** Okay, and Mr. Steen told you that the people who had
10:49:16 abducted Heidi were members of Vicious Circle back in 1994
10:49:20 when Heidi was abducted?
10:49:21 **A.** Um hum, yes.
10:49:22 **Q.** And his description that he took her -- the gang
10:49:32 took her to a cabin off the woods off of Route 69?
10:49:37 **A.** Um hum.
10:49:38 **Q.** And Mr. Steen did not admit to actually abducting
10:49:44 Ms. Allen.
10:49:44 **A.** No, just disposing her body.
10:49:46 **Q.** He didn't admit to killing her did he?
10:49:49 **A.** No.
10:49:49 **Q.** And the way he spoke of it, sounded like she was
10:49:55 already dead by the time he saw her?
10:49:56 **A.** Yeah, he --

10:49:57 **Q.** Is that your understanding?

10:49:58 **A.** He -- he said something that he went -- along the lines that he went to a friend's house and they were in the middle of discussing on how to dispose of her.

10:50:07 **Q.** So his involvement -- did he say exactly what he did as far as the disposal?

10:50:13 **A.** Just helped hide her body.

10:50:17 **Q.** So that was the only bad act that he actually admitted to doing to you?

10:50:22 **A.** Yeah, he -- he had said to me that he had nothing to do with her killing, just her body being disposed of.

10:50:29 **Q.** Okay. Now sometime after that conversation with Mr. Steen, did you speak with Tonya Priest about what Mr. Steen had told you?

10:50:38 **A.** Yes.

10:50:39 **Q.** And what was that conversation? Oh, when did that conversation --

10:50:43 MS. BIANCO: Objection. Beyond the scope and it's hearsay.

10:50:48 THE COURT: I'll sustain on beyond the scope.

10:50:50 **Q.** You indicated to Ms. Bianco you spoke with the police in May -- I'm sorry, May of twenty-thirteen, 2013, about this incident?

10:51:17 **A.** Yes.

10:51:18 **Q.** Prior to speaking to the police, did you talk with

10:51:21 any other individuals about what Mr. Steen had told you?

10:51:25 **A.** Just Tonya. She had called me to let me know that
10:51:28 the investigators would be coming to see me for the story
10:51:31 that Jay gave me.

10:51:33 **Q.** With the story that she gave you?

10:51:34 **A.** No, the story that Jay gave me.

10:51:38 **Q.** Okay. And when did that conversation take place?

10:51:44 **A.** About a week, two weeks before they showed up.

10:51:48 **Q.** Okay, so that was twenty-thirteen, 2013?

10:51:50 **A.** Yes.

10:51:50 **Q.** Had you spoken with her? How did she know you knew
10:51:54 about this?

10:51:56 THE COURT: Can you stop just a second? Did
10:51:58 you say Jay?

10:51:59 THE WITNESS: Yeah.

10:52:00 THE COURT: Who is Jay?

10:52:00 THE WITNESS: Jay is Thumper.

10:52:02 THE COURT: Okay.

10:52:03 **Q.** Mr. Steen would go by Jay or Thumper?

10:52:06 **A.** Yeah.

10:52:06 **Q.** You said Ms. Priest called you and told you the
10:52:12 police would be coming and seeing you in May of 2013?

10:52:16 **A.** Yes.

10:52:16 **Q.** How did -- how did she know the police were going to
10:52:21 be coming to see you?

10:52:22 MS. BIANCO: Objection how she knew Tonya
10:52:24 Priest knew the police would come to see her.
10:52:26 THE COURT: Sustained.
10:52:26 **Q.** Okay, had you ever talked about it prior to that
10:52:29 phone call with Ms. Priest?
10:52:31 **A.** Yes.
10:52:32 **Q.** And when was that?
10:52:33 **A.** About three or four days after Thumper had given me
10:52:37 the story.
10:52:38 **Q.** Okay, did you tell her what Thumper told you?
10:52:41 **A.** Yes. She asked.
10:52:42 **Q.** Okay, and what was her response?
10:52:44 **A.** Her response to me was, "Oh, my God. That's almost
10:52:47 the exact same story that he gave me and Sidney years
10:52:52 prior."
10:52:53 **Q.** Okay, since the past six months, have you read any
10:53:01 of the newspaper accounts of what Tonya has said?
10:53:04 **A.** Not everything she's had to say, but I have been
10:53:08 following along.
10:53:09 **Q.** Okay, have you heard her account of what James Steen
10:53:14 told her?
10:53:15 **A.** Parts of it, yeah.
10:53:16 **Q.** Okay.
10:53:17 **A.** From what she's given you guys.
10:53:18 **Q.** Would you agree that it's different from what Jay

10:53:21 told you?

10:53:22 MS. BIANCO: Objection to her opinion of what
10:53:24 she's hearing versus what somebody else is hearing.
10:53:28 She's asking her do you agree it's different from this
10:53:30 one's story and that would be self-evident.

10:53:31 THE COURT: Statement wasn't it? Ask the
10:53:33 question again. I don't think it was what she said. I
10:53:36 thought it was what she wrote or the way she read it.

10:53:39 **Q.** Did you read or see Ms. Priest's statement as was
10:53:43 put in the paper?

10:53:44 **A.** Yes.

10:53:45 **Q.** Is her statement different from what James Steen
10:53:51 told you?

10:53:51 **A.** Yes.

10:53:53 **Q.** So that time when you first spoke with her, she said
10:53:57 "he told me the exact same story -- "

10:54:01 MS. BIANCO: Objection to what Tonya Priest is
10:54:02 saying to her.

10:54:03 THE COURT: Sustained.

10:54:04 MR. OAKES: Well, Your Honor, I'm not offering
10:54:05 it for the truth of the matter asserted, but the fact
10:54:09 that it was said by Ms. Priest.

10:54:10 MS. BIANCO: It's also beyond the scope.

10:54:12 THE COURT: I'm going to sustain the
10:54:14 objection.

10:54:15 **Q.** Okay. Ms. Shaw, thank you very much.

10:54:42 THE COURT: Ms. Bianco, redirect?

10:54:44 MS. BIANCO: May we have a moment, Your Honor?

10:54:46 THE COURT: Sure.

10:54:46 (Whereupon, there was a pause in the proceeding.)

10:55:05 REDIRECT EXAMINATION

BY MS. BIANCO:

10:55:07 **Q.** Megan, do you have any personal knowledge when this
10:55:09 VC gang was established?

10:55:11 **A.** No.

10:55:12 **Q.** And why are you so nervous to be here?

10:55:16 **A.** I'm afraid of being killed.

10:55:18 **Q.** By who?

10:55:19 MR. OAKES: Objection, Your Honor.

10:55:20 THE COURT: What's the relevance?

10:55:22 MS. BIANCO: Well, she's nervous as could be
10:55:24 and she --

10:55:25 THE COURT: Sustained.

10:55:27 MS. BIANCO: Okay, no further questions.

10:55:28 THE COURT: Thank you, Ms. Shaw. Any recross?

10:55:31 MR. OAKES: Nothing, Your Honor.

10:55:32 THE COURT: Thank you, Ms. Shaw. Next witness
10:55:42 is at one?

10:55:44 MS. PEEBLES: Yes, Judge. Investigator

10:55:46 Pietroski.

10:55:47 THE COURT: Do you plan on calling the Sheriff Todd? You told him about two-ish?

10:55:52 MS. PEEBLES: I would think that would be about right.

10:55:54 THE COURT: You think so?

10:55:57 MR. OAKES: I don't know what she's going to ask him.

10:56:02 THE COURT: We'll reconvene at one o'clock.

10:56:06 MS. BIANCO: May we be -- may we be heard even in chambers regarding some issue of subpoenas?

10:56:12 THE COURT: Sure. Do you want to do it in chambers and come back on the record?

10:56:16 MS. PEEBLES: No, we just want to ask.

10:56:18 THE COURT: Okay. Let's go in chambers.

10:56:28 (Whereupon, there was a recess.)

JAMES PIETROSKI, Called as a witness, having
12:57:16 been duly sworn, was examined and testified as follows:

12:57:16 THE CLERK: Please state your name for the record.

12:57:18 THE WITNESS: James Pietroski.

12:57:19 THE CLERK: Spell your last name.

12:57:20 THE WITNESS: P-I-E-T-R-O-S-K-I.

12:57:26 THE COURT: Mr. Pietroski, do you consent to having your testimony video and audio taped?

12:57:30 THE WITNESS: No, sir.

12:57:31 THE COURT: Thank you.

DIRECT EXAMINATION

12:57:34 BY MS. PEEBLES:

12:57:35 **Q.** Investigator Pietroski, when did you start working
12:57:38 for the Oswego County Sheriff's Department?

12:57:40 **A.** I started June thirtieth, 1996.

12:57:46 **Q.** So you were not involved in the original
12:57:49 investigation regarding the abduction of Heidi Allen?

12:57:53 **A.** No, ma'am.

12:57:53 **Q.** At some point were you assigned to follow up on
12:57:55 leads in connection with the Heidi Allen case?

12:57:57 **A.** Yes, ma'am.

12:57:57 **Q.** And was the investigation considered to be ongoing?

12:58:01 **A.** Yes, ma'am.

12:58:01 **Q.** And why was that?

12:58:02 **A.** 'Cause we haven't -- we don't know where Heidi Allen
12:58:07 is.

12:58:08 **Q.** Now, everything that was coming in through you
12:58:12 regarding any leads, where would those leads be coming from
12:58:17 generally speaking?

12:58:20 **A.** The leads would just come like my lieutenant would
12:58:26 say hey, can you look into this, or I would get like from
12:58:31 exploited missing -- missing persons reports, they would
12:58:36 send me a report.

12:58:38 **Q.** So any leads that were coming in from various sources, tips, would go directly to you?

12:58:45 **A.** No.

12:58:46 **Q.** Okay, where would they go?

12:58:47 **A.** A lot of leads would go up front. If somebody called in to Sheriff's Department, they could do a lead sheet.

12:58:53 **Q.** And they would eventually work their way down to you?

12:58:56 **A.** Correct.

12:58:56 **Q.** And again, what year was it when you were assigned to follow up on leads in connection with the Heidi Allen case?

12:59:04 **A.** I don't remember exactly what year.

12:59:06 **Q.** By the year 2000, were you assigned to follow up on any of the leads?

12:59:14 **A.** No, ma'am.

12:59:14 **Q.** Can you give us an approximate date when you would have been --

12:59:17 **A.** 2011.

12:59:19 **Q.** 2011?

12:59:20 **A.** Two-thousand -- yeah, two-thousand -- late 2010, early 2011.

12:59:25 **Q.** 2010/2011?

12:59:28 **A.** Yes, ma'am.

12:59:28 **Q.** All right, now, prior to you being assigned to take the lead on the Heidi Allen case, who was it before you who was your predecessor?

12:59:37 **A.** I do not know.

12:59:38 **Q.** You wouldn't have conferenced with the individual who may have been your predecessor in connection with following up on these leads?

12:59:47 **A.** I did not, no.

12:59:48 **Q.** Now I want to ask you some questions about some information concerning a Jessica Howard. Do you understand my question?

12:59:58 **A.** Um hum.

12:59:59 **Q.** When is the first time you were contacted in regards to information that Jessica Howard provided?

01:00:07 MR. OAKES: Objection, Your Honor, relevance.

01:00:09 THE COURT: Excuse me?

01:00:11 MR. OAKES: Objection, relevance.

01:00:12 THE COURT: Overruled.

01:00:13 **A.** There was an e-mail from my lieutenant about Jessica Howard.

01:00:17 **Q.** Yeah, and when you obtained that -- well, why don't you tell us what that lead was in connection with Jessica Howard.

01:00:23 **A.** I don't remember verbatim, but it's about something about Roger Breckenridge.

01:00:32 **Q.** If I showed you a document such as the e-mail you received, would that help refresh your recollection?

01:00:37 **A.** Yes.

(Defendant's Exhibit No. 131 was marked for identification).

01:00:38 **Q.** Investigator, I'm going to hand you what's been now marked as Defense Exhibit 131, it's an add on to our exhibit list, and ask if you can take a look at that document and read it to yourself and let me know if that helps refresh your recollection.

01:00:56 **A.** Yes.

01:00:56 **Q.** So as a result of -- so what did you do after you received that information?

01:01:04 **A.** I -- a couple times I was out to DSS and I talked to Investigator Wheeler and Investigator Yerdon who handled the case originally and spoke to them, asked them if they knew about Roger Breckenridge.

01:01:22 MS. PEEBLES: Your Honor, at this time I'd like to move into evidence Defense Exhibit 131.

01:01:27 THE COURT: Can the People see it?

01:01:30 MR. OAKES: I -- yes, please, Your Honor. Your Honor, the People would object to it being received. It's being used to refresh the witness's recollection. He recalled seeing it at this point. There's allegations made within that, and I'm afraid it

01:01:53 would be considered for the truth of the matter
01:01:55 asserted therein.

01:01:56 THE COURT: What are you --

01:01:57 MR. PEEBLES: I'm not actually offering it for
01:02:00 the truth of matter. I'm offering it --

01:02:00 THE COURT: Why would you offer it?

01:02:01 MR. PEEBLES: I'm offering it so that I can
01:02:02 ask Mr. Pietroski questions with regard to what he did
01:02:06 as far as following up on the information that's set
01:02:08 forth in this.

01:02:08 THE COURT: You can use it to refresh his
01:02:10 recollection if he doesn't remember his answer.

01:02:12 MS. PEEBLES: I also wanted to ask him about
01:02:14 the notes that he made himself on this document.

01:02:18 THE COURT: I'll allow it in for the limited
01:02:20 purpose of Investigator Pietroski making reference to
01:02:23 his notes.

(Defendant's Exhibit No. 131 was received in
01:02:24 evidence).

01:02:24 MS. PEEBLES: Thank you.

01:02:25 **Q.** Investigator, I'm going to give you back Exhibit 131
01:02:29 and ask if you recognize the handwriting on that e-mail.

01:02:32 **A.** Yes, ma'am. It's my writing.

01:02:34 **Q.** And what exactly did you write on there?

01:02:36 **A.** Two-twenty-nine one-two, sixteen thirty hours,

01:02:39 attempt phone call, no answer, Jessica Howard, 591-0891,
01:02:45 134 County Route 43.

01:02:46 **Q.** And what -- what does that notation mean that you
01:02:54 put down on there?

01:02:56 **A.** I don't understand.

01:02:57 **Q.** Well, you -- you attempted to make a phone call?

01:03:00 **A.** Um hum.

01:03:00 **Q.** Right?

01:03:01 **A.** Yes.

01:03:01 **Q.** And you weren't successful in getting a hold of her.

01:03:04 **A.** Correct.

01:03:04 **Q.** And is that the date that you wrote down the date
01:03:07 you tried to get hold of her?

01:03:08 **A.** I believe it would be, yes.

01:03:10 **Q.** Now, is there any other notation on that e-mail?

01:03:14 **A.** My -- my notation?

01:03:16 **Q.** Yes, any other notation from you on that e-mail.

01:03:19 **A.** Just the slash mark up here on the right but that's
01:03:22 the only --

01:03:23 **Q.** Okay, what did you do with that document after
01:03:26 you made that attempt to call Jessica Howard?

01:03:29 **A.** I made it part of my case file.

01:03:31 **Q.** Where did you put it within your case file?

01:03:35 MR. OAKES: Objection. Relevance, Your Honor.

01:03:36 THE COURT: What's the relevance, Ms. Peebles?

01:03:39 MS. PEEBLES: Well, Your Honor, it goes along
01:03:42 with our Brady violation.

01:03:45 THE COURT: You have it. How can it be a
01:03:48 violation of Brady?

01:03:50 MS. PEEBLES: In addition, Your Honor, it has
01:03:50 information concerning Breckenridge which also ties
01:03:53 into --

01:03:53 THE COURT: Your Brady violation is pre-1994.

01:03:57 MS. PEEBLES: Well, in addition to the new
01:03:59 Brady violation, I'm talking about his investigation in
01:04:00 2013 where Breckenridge's name is brought up by Tonya
01:04:05 Priest and Jennifer Wescott and this information was in
01:04:08 a file somewhere. I'm just asking him where it was and
01:04:11 I want to know whether he was able to utilize that
01:04:14 information when he was using the information provided
01:04:17 by Tonya Priest and Jennifer Wescott.

01:04:18 THE COURT: How's that make it Brady? You
01:04:20 have it.

01:04:21 MS. PEEBLES: Well, it does tie into the new
01:04:24 investigation, Judge, in addition to the fact that it
01:04:26 wasn't timely turned over.

01:04:30 THE COURT: I'll allow it for the purpose of
01:04:34 finding out where it went, where he placed it.

01:04:36 **Q.** Where did you put that document?

01:04:38 **A.** It was in my file, a box of files, a file I had in a

01:04:44 box.

01:04:44 **Q.** To follow up on leads? Now you also received
01:04:49 information from the National Center for Missing and
01:04:52 Exploited Children in connection with this case, correct?

01:04:55 **A.** That's correct.

01:04:56 **Q.** And do you remember when the first time is that you
01:04:58 received a lead in connection with the Heidi Allen case as
01:05:02 the lead investigator?

01:05:03 **A.** It was like February, 2011.

01:05:09 **Q.** And when you got that information, do you recall
01:05:12 what the information was that you received at that time
01:05:15 from the National Center for Missing and Exploited
01:05:18 Children?

01:05:19 MR. OAKES: Objection, Your Honor. One,
01:05:21 hearsay; two, I'm not sure if that information relates
01:05:24 to the present investigation or if it's relevant.
01:05:29 Alleged new evidence.

01:05:31 THE COURT: How are you going to get by the
01:05:32 hearsay, Ms. Peebles?

01:05:33 MS. PEEBLES: It's just a question, Your
01:05:35 Honor, as to what he did as a result of receiving the
01:05:38 information. I'm not asking him what it was at this
01:05:41 point.

01:05:41 MR. OAKES: I thought she had, I'm sorry.

01:05:43 THE COURT: If you ask him what he did, that's

01:05:44 fine. I thought you'd ask what he had received from
01:05:48 them.

01:05:48 **Q.** Well, did you receive information in connection with
01:05:50 this case, the Heidi Allen case that is, as lead
01:05:53 investigator?

01:05:54 **A.** Yes.

01:05:55 **Q.** And as a result of receiving that in 2011, what did
01:05:59 you do with the information?

01:06:01 **A.** Well, there was a couple different ones so the
01:06:03 one -- the one was anonymous so there wasn't anything I can
01:06:07 do with it.

01:06:08 **Q.** But did you recognize the names that were provided
01:06:10 by anonymous?

01:06:11 **A.** There was, yes.

01:06:12 **Q.** And what were those names?

01:06:14 **A.** Breckenridge.

01:06:14 **Q.** And his name surfaced again, fair?

01:06:18 **A.** Yes.

01:06:18 **Q.** Now, did you receive any other leads from the
01:06:25 National Center for Missing and Exploited Children after
01:06:27 February of 2011?

01:06:29 **A.** Yes.

01:06:29 **Q.** And do you remember when that was?

01:06:31 **A.** February, February fourth and fifth I think. No,
01:06:39 February twelfth and thirteenth, 2013?

01:06:45 **Q.** And what -- did you know who sent that tip to the National Center for Missing and Exploited Children?

01:06:52 **A.** Yes.

01:06:53 **Q.** And who -- who sent that?

01:06:55 **A.** It was an e-mail from Tonya Priest.

01:06:57 **Q.** And what did you do with that information after you received it in early February of 2013?

01:07:03 **A.** I sent her an e-mail requesting that she speak with me.

01:07:06 **Q.** And did she respond back?

01:07:08 **A.** No.

01:07:08 **Q.** When did you talk with Tonya Priest for the first time?

01:07:16 **A.** It was late February, twenty-second, twenty-third, somewhere in there.

01:07:21 **Q.** And how did that come about?

01:07:23 **A.** My lieutenant said that Greg Oakes, DA Oakes, had been contacted by Mary Felasco, and that Tonya Priest was reporting knowledge about the Heidi Allen case.

01:07:40 **Q.** So she herself was reaching out to Mr. Oakes and that's --

01:07:45 **A.** No.

01:07:45 **Q.** -- after she sent the --

01:07:46 **A.** Tonya Priest?

01:07:47 **Q.** Yes.

01:07:47 **A.** No, she -- Mary Felasco contacted Greg Oakes. I
01:07:54 don't know how Mary Felasco got involved. Somebody
01:07:56 contacted Mary Felasco and Mary Felasco reached out to DA
01:08:00 Oakes.

01:08:00 **Q.** And did there come a time when you sat down with Mr.
01:08:02 Oakes and had a conversation with Tonya Priest?

01:08:04 **A.** Yes.

01:08:05 **Q.** And when was that?

01:08:06 **A.** February twenty-second I think, 2013.

01:08:13 **Q.** And was that recorded?

01:08:14 **A.** I'm not sure. I'm not sure the exact date, but yes,
01:08:19 it was recorded.

01:08:20 **Q.** So by the time Tonya Priest contacts you regarding
01:08:27 information that she was providing you in connection with
01:08:29 the Heidi Allen case, is it a fair statement to say that
01:08:33 you had already received information concerning Roger
01:08:36 Breckenridge, is that a fair statement?

01:08:39 **A.** I've received his name, yes.

01:08:41 **Q.** From several different leads, correct?

01:08:44 **A.** A couple leads, yes.

01:08:45 **Q.** And I just want to know what you did, before Tonya
01:08:51 actually spoke with you and District Attorney Greg Oakes,
01:08:57 what exactly did you do with those leads? What did you do
01:09:01 with those leads?

01:09:03 MR. OAKES: Objection. Relevance, Your Honor.

01:09:04 THE COURT: I'm trying to figure out which
01:09:06 leads you're talking about.

01:09:07 MS. PEEBLES: The three that he referred to,
01:09:09 the two from National Center for --

01:09:11 THE COURT: He already answered the one was
01:09:13 anonymous. He didn't do anything. It was anonymous.
01:09:16 Can you be specific? You're talking about the one from
01:09:18 Tonya Priest or the one that predates the Missing and
01:09:21 Exploited Children?

01:09:22 **Q.** I just want to get the sum total of what you
01:09:25 actually did with all three leads so I'm clear. Start with
01:09:28 Jessica Howard. The e-mail that you received from your
01:09:31 lieutenant, what did you do to follow up on that? Was it
01:09:35 the one phone call?

01:09:36 **A.** It --

01:09:37 MR. OAKES: Objection, Your Honor. Again,
01:09:39 relevance.

01:09:39 THE COURT: How's it relevant, Ms. Peebles, to
01:09:43 what his action was?

01:09:44 MS. PEEBLES: Judge, I'm trying to figure out
01:09:46 what he does with this information from the time he
01:09:49 gets it until the time Tonya Priest comes forward.

01:09:53 THE COURT: On a Brady issue.

01:09:54 MS. PEEBLES: Well, no, I'm just trying to --

01:09:56 THE COURT: It's not a Brady issue.

01:09:59 MS. PEEBLES: Well, I don't need to argue that right now, but what I'm suggesting, Your Honor, is this information was available at the time he was interviewing with Mr. Oakes Tonya Priest.

01:10:13 THE COURT: Okay, so why is it relevant what he did with it when he received it? It's available when he spoke with -- I'm going to sustain.

01:10:21 **Q.** So when you sat down with Tonya Priest and Greg Oakes, you already had information about Roger Breckenridge.

01:10:29 **A.** I had his name, yes.

01:10:31 **Q.** You had his name in connection with the Heidi Allen investigation.

01:10:34 **A.** Correct.

01:10:35 **Q.** Okay. Now, when Tonya Priest had the conversation over the phone at the end of February, did -- was there a decision to bring her to New York?

01:10:47 **A.** Not at that time, no.

01:10:48 **Q.** When was that decision made?

01:10:50 **A.** I don't know when it was made.

01:10:52 **Q.** Were you part of that decision-making process?

01:10:55 **A.** No, ma'am.

01:10:55 **Q.** You were not?

01:10:57 **A.** No.

01:10:57 **Q.** Do you know whether or not she came to Oswego or

01:11:02 Syracuse in sometime in February, late February, early March of 2013?

01:11:07 **A.** Yes.

01:11:08 **Q.** Did you personally interview her at any point when she was here in New York?

01:11:12 **A.** Yes.

01:11:13 **Q.** And do you remember when that was?

01:11:15 **A.** I think it was February twenty-eighth, 2013.

01:11:21 **Q.** After her interview, was there a decision made as to how to go about following up with what she told you?

01:11:31 **A.** As far as -- I don't understand.

01:11:34 **Q.** What were you going to do with the information that she gave you when she came here from -- when she came to New York?

01:11:39 **A.** We were going to follow up with Jennifer Wescott.

01:11:41 **Q.** And what -- what was done to follow up with Jennifer Wescott?

01:11:45 **A.** An interview with Jennifer Wescott.

01:11:47 **Q.** Were you involved at all in the audio, the monitored call between Tonya Priest and Jennifer Wescott?

01:11:53 **A.** No.

01:11:53 **Q.** Did you listen to that call?

01:11:54 **A.** Yes.

01:11:55 **Q.** When was the first time you listened to that call?

01:11:57 MR. OAKES: Objection, relevance.

01:11:59 THE COURT: I'll allow it.

01:12:00 A. I don't remember the first time I listened to it.

01:12:02 Q. Was it prior to Jennifer Wescott coming in to talk
01:12:05 to you?

01:12:06 A. Yes.

01:12:07 Q. And was it the day -- do you recall whether it was
01:12:10 the day Jennifer Wescott came in to speak with you?

01:12:13 MR. OAKES: Objection, Your Honor, relevance.

01:12:16 THE COURT: I'll allow it.

01:12:18 A. I listened to it on that day when she came in, yes,
01:12:21 but I listened to it prior to that also.

01:12:23 Q. So you were familiar with what she -- what was
01:12:25 talked about on the telephone with Jennifer Wescott.

01:12:27 A. Yes.

01:12:28 Q. Now, when you got a hold of Jennifer Wescott, did
01:12:31 you invite her to the Sheriff's Department or tell her she
01:12:34 had to come down?

01:12:35 A. Yeah. I asked her to come down, yes.

01:12:37 Q. And do you recall what day she came down?

01:12:41 A. It was March, March thirteenth. I'm not positive of
01:12:46 the exact date.

01:12:47 Q. Roughly?

01:12:47 A. Roughly the thirteenth, somewhere around there.

01:12:49 Q. Of 2013?

01:12:50 A. Yes, ma'am.

01:12:51 **Q.** So that was shortly after the monitored audio recording between her and Jennifer West, or Tonya Priest.

01:12:59 **A.** Yes.

01:12:59 **Q.** Now when you contacted Jennifer Wescott or at any time did you ever tell her that she may be a suspect?

01:13:08 **A.** No.

01:13:08 **Q.** And what was the first thing that you told Jennifer Wescott when she came in for the interview?

01:13:16 **A.** I don't remember.

01:13:20 **Q.** If I played the recording, would that help refresh your recollection?

01:13:29 **A.** Sure, but you asked -- I spoke to her before she came into the room obviously so you asked what I first said to her when she came in.

01:13:41 **Q.** Do you remember what you first said to her when she first came in?

01:13:43 **A.** No.

01:13:43 **Q.** Do you remember what you said to her when she first went into the interview room?

01:13:47 **A.** No.

01:13:48 **Q.** Now, when you were asking her about what the contents of conversation she had with Tonya Priest, did it match what she had said on the recording as far as you recall hearing?

01:14:05 **A.** She -- there was -- no, it didn't match what she was

01:14:10 saying.

01:14:10 **Q.** Now, did she tell you that she text anybody before
01:14:15 she came to interview you?

01:14:17 MR. OAKES: Objection. Leading, Your Honor.

01:14:19 THE COURT: Sustained. Also calls for hearsay
01:14:22 answer.

01:14:22 **Q.** Did you ask to examine Jennifer Wescott's phone?

01:14:25 **A.** Yes.

01:14:26 **Q.** And did you?

01:14:27 **A.** I did not personally, no.

01:14:29 **Q.** Who -- who actually examined her phone?

01:14:32 **A.** Bryan Blake.

01:14:36 **Q.** During the course of the audio conversation, did you
01:14:40 ever hear the name Murtaugh during that phone conversation
01:14:43 when you were listening to it?

01:14:46 **A.** The phone conversation between Jennifer and --

01:14:48 **Q.** Tonya Priest.

01:14:49 **A.** Tonya. I don't recall.

01:14:54 **Q.** When's the last time you listened to that audio
01:14:58 recording?

01:15:01 THE COURT: Stop. Are you talking about the
01:15:02 audio recording that he made when he interviewed --

01:15:05 MS. PEEBLES: No. The audio recording that he
01:15:07 listened to before he interviewed.

01:15:09 THE COURT: Between Wescott and --

01:15:11 MS. PEEBLES: Priest.

01:15:13 MR. OAKES: Objection, Your Honor, relevance. She initially asked what steps he took initially. How is the last --

01:15:17 THE COURT: He said he listened to it approximately two times prior to the interview. Are you asking subsequent to the interview?

01:15:23 MS. PEEBLES: Yes, subsequent to the interview.

01:15:25 THE COURT: What's the relevance to that?

01:15:25 MS. PEEBLES: In terms of his investigation and what he did to follow up on it.

01:15:29 THE COURT: I'm going to sustain.

01:15:31 **Q.** During the course of your interview of Jennifer Wescott, you indicated that you were leaving the room and listening to the audio recording, is that correct?

01:15:42 **A.** Correct.

01:15:43 **Q.** How many times did you do that?

01:15:45 **A.** A couple.

01:15:47 **Q.** Why were you doing that?

01:15:49 **A.** So I could make sure that what she's saying so I could listen to it and say hey, you did not say this so I can call her out on it.

01:15:57 **Q.** Were you satisfied with Jennifer Wescott's response to you in connection with the questions you were asking her

01:16:03 about that audio recording?

01:16:04 MR. OAKES: Objection, relevance.

01:16:07 THE COURT: No, I think it's relevant. I'll 01:16:08 allow it.

01:16:10 **A.** Satisfied she said -- I don't understand. Was I 01:16:17 satisfied?

01:16:18 **Q.** Yeah.

01:16:19 **A.** As far as was she telling me the truth or not?

01:16:25 **Q.** Exactly.

01:16:27 **A.** No.

01:16:31 **Q.** During that audio recording, she mentions that she's 01:16:36 afraid of the people, particular people, she names them in 01:16:40 the audio recording you were listening to, you heard that, 01:16:42 right?

01:16:43 MR. OAKES: Objection, Your Honor. Calls for 01:16:46 facts not in evidence, calls for hearsay.

01:16:48 MS. PEEBLES: Actually the facts are in 01:16:50 evidence. We have the audio recording in evidence and 01:16:52 he said he listened to it.

01:16:54 THE COURT: I'll allow it.

01:16:55 **A.** Again, you're going to have to repeat the question 01:16:57 please.

01:16:58 **Q.** During the course of listening to that audio 01:16:59 recording, you heard Jennifer Wescott rattle off a few 01:17:03 names of who she was afraid of, do you remember that?

01:17:05 **A.** No, I don't.

01:17:05 **Q.** You do not?

01:17:06 **A.** I do not, no.

01:17:08 **Q.** If we played the recording for you, would that help
01:17:11 refresh your recollection?

01:17:12 **A.** Yes.

01:17:12 MS. PEEBLES: Judge, I'd like to key up the
01:17:15 part where it's relevant to what the question I'm just
01:17:19 asking.

01:17:20 THE COURT: Mr. Oakes?

01:17:22 MR. OAKES: Your Honor, it's my
01:17:24 understanding -- well, is there a transcript of that
01:17:27 same interview?

01:17:28 MS. PEEBLES: There is. I can use the
01:17:30 transcript. It might make it faster.

01:17:33 MR. OAKES: That's what I was thinking.

01:17:35 THE COURT: Do you have the transcript?

01:17:36 MS. PEEBLES: I do have the transcript
01:17:37 available.

01:18:05 (Whereupon, there was a pause in the
01:18:16 proceeding.)

01:18:16 **Q.** I'm going to hand you what's been marked as Defense
01:18:52 Exhibit 26 and ask you to take a look at the bottom of page
01:18:56 five and ask if you could read that to yourself and ask if
01:19:02 that refreshes your recollection.

01:19:06 (Whereupon, there was a pause in the proceeding.)

01:19:10 **A.** Okay, yes.

01:19:11 **Q.** Do you recall now those names?

01:19:13 **A.** Yes.

01:19:14 **Q.** When you were interviewing Jennifer Wescott on March seventh of 2013, did you ask her about those names?

01:19:24 **A.** I don't remember.

01:19:26 **Q.** If I showed you the transcript from your interview, would that help refresh your recollection?

01:19:30 **A.** Yes.

01:19:44 **Q.** I'm going to hand you what's been marked as Defense Exhibit 32 and ask if you can take a look at that. Read through those pages and see whether you asked her anything about those individuals.

01:19:55 (Whereupon, there was a pause in the proceeding.)

01:22:50 **A.** Okay.

01:22:51 **Q.** Do you recall whether you asked her about any of those individuals during that interview?

01:22:56 **A.** Yes.

01:22:57 **Q.** What's your answer?

01:22:58 **A.** I remember asking her about other individuals, yes.

01:23:00 **Q.** Who did you ask her about?

01:23:02 **A.** I asked her about James Steen, I asked her about

01:23:05 Michael Bohrer, Roger Breckenridge, Tonya Priest, a D.B.,
01:23:11 she kept saying D.B.
01:23:13 **Q.** She said she didn't know who D.B. was?
01:23:15 **A.** Right.
01:23:16 **Q.** What about the names I just asked you to take a look
01:23:18 at on the bottom of page five, who she was afraid of on the
01:23:21 audio recording.
01:23:22 **A.** Dan Barney.
01:23:23 **Q.** Who else?
01:23:24 **A.** Bob Zakala.
01:23:26 **Q.** And who else?
01:23:29 **A.** It's not on the bottom -- oh, Roger.
01:23:33 **Q.** No?
01:23:33 **A.** There's only -- this -- is it on the next page?
01:23:37 **Q.** How about Dave Maynes?
01:23:39 **A.** It's on the next page.
01:23:41 **Q.** So those three names.
01:23:42 **A.** Yes, ma'am.
01:23:42 **Q.** Dan Barney, Dave Maynes, Bob Zakala. Did you ask
01:23:48 her about any of those individuals during your interview on
01:23:50 March seventh of 2013?
01:23:57 **A.** In depth I don't think so, no, but she mentioned --
01:24:02 she said these names, yes.
01:24:03 **Q.** She --
01:24:04 **A.** I don't remember --

01:24:06 **Q.** It's your testimony here in this courtroom that you asked her questions about those three individuals?

01:24:12 **A.** I don't remember specifically about these three at this time. At this interview.

01:24:19 **Q.** Did you just read the transcript from --

01:24:22 **A.** No. I skimmed through it to look for the names that you asked me about.

01:24:24 **Q.** Did you see those names in there?

01:24:26 **A.** Yes, ma'am.

01:24:26 **Q.** And you saw those three names?

01:24:29 **A.** I see David Maynes. I'm sorry. No, in this one, just D.B., Roger.

01:24:35 **Q.** D.B., she said she didn't know who D.B. was.

01:24:38 **A.** She didn't, yes, she said she didn't know who.

01:24:40 **Q.** Did you ask her whether it was Dan Barney?

01:24:43 **A.** No.

01:24:43 **Q.** Did you ask her anything at all about Dan Barney?

01:24:46 **A.** No.

01:24:47 **Q.** So we're clear, during the March seventh interview, you didn't ask about those three folk that we just talked about.

01:24:55 MR. OAKES: Objection, Your Honor. Asked and answered a few times now.

01:24:58 THE COURT: Sustained.

01:24:58 MS. PEEBLES: I just want to be clear in my

01:25:00 own mind what his answer is.

01:25:02 THE COURT: He said no. Sustained.

01:25:07 **Q.** By the way, did you play that audio recording for
01:25:11 Jennifer Wescott before you interviewed her?

01:25:13 **A.** No.

01:25:14 **Q.** At any time during the interview did you play that
01:25:16 audio recording for her?

01:25:17 **A.** No.

01:25:17 **Q.** Now, you had asked her whether if she knew anything,
01:25:38 whether she would tell you. Do you remember asking her
01:25:40 those questions?

01:25:40 **A.** Yeah.

01:25:41 **Q.** And you listened to the audio recording before you
01:25:46 went to the interview, right? You listened to the audio
01:25:52 recording between Tonya Priest and Jennifer Wescott before
01:25:55 your interview.

01:25:55 **A.** Yes.

01:25:56 **Q.** You knew what was on there.

01:25:57 **A.** Yes.

01:25:58 **Q.** And you heard Wescott tell Priest that she would
01:26:03 never tell anybody, no, never, about what she knew, fair?

01:26:11 **A.** Sure.

01:26:12 **Q.** But when you were interviewing her, that is Jennifer
01:26:17 Wescott, on March seventh of 2013, she was telling you that
01:26:20 if she had something she would open up and let you have it,

01:26:23 that's what she said, right?
01:26:24 **A.** Correct.
01:26:25 **Q.** But you knew that was a lie when she was saying it
01:26:29 to you?
01:26:29 MR. OAKES: Objection, Your Honor, as to
01:26:31 characterization.
01:26:33 THE COURT: I'm going to sustain it.
01:26:34 MR. OAKES: And speculation.
01:26:35 THE COURT: Sustained.
01:26:35 **Q.** Did you believe that she would open up and let you
01:26:38 have it if she knew it when you were asking her those
01:26:41 questions on March seventh?
01:26:43 MR. OAKES: Objection.
01:26:43 **A.** No.
01:26:44 THE COURT: What's the objection?
01:26:47 MR. OAKES: Speculation.
01:26:49 THE COURT: Sustained.
01:26:51 MS. PEEBLES: Well, it's his state of mind.
01:26:54 THE COURT: You said "what she."
01:26:56 MS. PEEBLES: No, I didn't, I said --
01:26:57 THE COURT: Read back the question. Maybe I
01:26:59 misheard the question.
01:27:09 (Whereupon, the court reporter read back the
01:27:10 last question).
01:27:10 **A.** No.

01:27:15 **Q.** But did you tell her I believe you?

01:27:17 **A.** Yeah, I told her that.

01:27:20 **Q.** Why would you tell her that?

01:27:22 **A.** It's just a technique for -- to elicit disclosure
01:27:26 about what she has to tell me, that's all.

01:27:28 **Q.** How does that technique help you get to the truth?

01:27:32 **A.** So she -- I've already said that she -- so she can
01:27:36 trust me so that, okay, yeah, we're friends, and we can --
01:27:40 okay, I will tell you anything, yeah, I'll tell you.

01:27:43 **Q.** How many times did you ask her "if you knew
01:27:47 something would you tell me," do you remember?

01:27:49 **A.** I don't remember.

01:27:50 **Q.** It was multiple times though fair to say?

01:27:53 **A.** I don't remember.

01:27:54 **Q.** Well, if you looked at the transcript, would that
01:27:56 help refresh your recollection?

01:27:58 **A.** Yes.

01:28:00 MR. OAKES: Objection as to relevance of the
01:28:02 number of times, Your Honor. He acknowledged that it
01:28:04 was more than once.

01:28:06 THE COURT: I'm not sure where we're going.
01:28:08 How's this new evidence.

01:28:09 MS. PEEBLES: It's an investigative technique
01:28:11 and I'm trying to get to the --

01:28:13 THE COURT: Yeah, are you trying to -- so it's

01:28:16 his technique. What are you trying to get at?

01:28:18 MS. PEEBLES: I'm trying to get at the new
01:28:21 information, the new evidence they had in connection
01:28:22 with this investigation.

01:28:24 THE COURT: But the new evidence is out there
01:28:25 now. You have already made your motion based upon the
01:28:29 new evidence that you know, and it's almost like you're
01:28:31 just challenging his -- his choice to or not to
01:28:34 proceed.

01:28:34 MS. PEEBLES: Not at all, Judge, I'm simply --

01:28:36 THE COURT: That's where you seem to be going
01:28:37 with it.

01:28:37 MS. PEEBLES: Absolutely not. The prosecution
01:28:39 has gone out of their way to consider Tonya Priest not
01:28:42 credible, so I think it's important for me to actually
01:28:44 follow up with the investigator to determine why they
01:28:46 made that decision.

01:28:49 THE COURT: This is Jennifer Wescott you're
01:28:53 asking about, not Tonya Priest.

01:28:54 MS. PEEBLES: Exactly. It's the investigator
01:28:57 who is making a determination about whether or not
01:28:58 Tonya Priest is credible.

01:29:00 THE COURT: You haven't asked him a question
01:29:03 about Tonya Priest yet. It was about Jennifer Wescott.

01:29:05 MS. PEEBLES: I'm asking him what he was doing

01:29:07 with the information that was provided by Tonya Priest
01:29:10 which included the telephone call with Jennifer
01:29:13 Wescott.

01:29:13 THE COURT: Can you get to the time quickly
01:29:16 please? I don't know. Simply we're going nowhere with
01:29:19 it right now.

01:29:21 **Q.** After the phone call, or after your interview with
01:29:24 Jennifer Wescott, what did you do to follow up on the
01:29:28 information that was provided by Tonya Priest after your
01:29:32 interview with Jennifer Wescott?

01:29:33 **A.** Yes.

01:29:34 **Q.** What did you do?

01:29:36 **A.** I did a lot. We did a lot of things but I don't
01:29:42 remember specific what you're asking.

01:29:43 **Q.** All right, why don't I start with did you go
01:29:46 interview James Steen?

01:29:47 **A.** Yes.

01:29:47 **Q.** Did you take a written statement from him?

01:29:49 **A.** Yes.

01:29:49 **Q.** And what questions were you asking Mr. Steen when
01:29:54 you went to interview him about what Tonya Priest said?

01:29:58 MR. OAKES: Objection, Your Honor. Again, I
01:30:00 guess the question -- this whole line of questioning
01:30:03 regarding how he conducted his investigation, the
01:30:05 manner in which he proceeded or what specific questions

01:30:08 he asked, the information's been developed. It was
01:30:11 turned over to defense counsel as a result of the
01:30:14 efforts of the DA's Office and Sheriff's Office in June
01:30:16 of 2013. They have that information provided to
01:30:20 defense counsel. What his personal assessment of that
01:30:23 information at the time or how he conducted that
01:30:25 investigation in particular seems largely irrelevant at
01:30:30 this point.

01:30:30 THE COURT: How's -- how's that relevant?

01:30:33 MS. PEEBLES: I disagree. The prosecution
01:30:35 basically discarded the information suggesting that
01:30:38 Tonya Priest was not credible, so I think it's
01:30:39 important for us to follow up on questions with regard
01:30:42 to the investigation, how they made that determination.

01:30:44 THE COURT: I don't think it's relevant. I'm
01:30:46 going to sustain it. I'm going to sustain the
01:30:48 objection.

01:30:49 **Q.** Well, you took two -- you took a statement from Mr.
01:30:55 Steen or you went and interviewed Mr. Steen recently at the
01:30:59 prison, correct?

01:31:03 **A.** Which -- which time? I interviewed --

01:31:06 **Q.** The last time you spoke with Mr. Steen, tell me when
01:31:09 that was.

01:31:09 **A.** Last month or the month before. I can't remember
01:31:13 the exact date.

01:31:14 **Q.** Do you remember what Mr. Steen told you when you
01:31:16 were at the prison interviewing him?

01:31:18 MR. OAKES: Objection, Your Honor. Hearsay,
01:31:20 one; secondarily, how's this relevant. The discussion
01:31:24 last month is after the motions were made, after the
01:31:28 hearing's been scheduled. How's it even relevant to
01:31:30 the investigation?

01:31:31 THE COURT: It is hearsay so I'm going to
01:31:33 sustain it on the hearsay.

01:31:34 **Q.** Well, did you write anything down? Did you actually
01:31:37 write down what he told you?

01:31:39 **A.** No.

01:31:39 **Q.** So you didn't take an actual written statement for
01:31:44 him the third time that you spoke with him?

01:31:46 **A.** No.

01:31:46 **Q.** But the first two times you did?

01:31:48 **A.** Yes.

01:31:49 **Q.** And he told you a lot more the third time you went
01:31:56 to see him, correct?

01:31:57 MR. OAKES: Objection, Your Honor. That calls
01:32:01 for characterization.

01:32:05 THE COURT: I guess I just don't know where
01:32:06 we're going with this. You have -- you have the
01:32:09 information from those interviews. Again, it's like
01:32:12 you're attacking the procedure and discarding the

01:32:16 outcome. How is it relevant that he --

01:32:19 MS. PEEBLES: I'm simply questioning why they
01:32:21 wouldn't write down the information from the third
01:32:24 interview.

01:32:24 THE COURT: You're challenging the process.

01:32:26 MS. PEEBLES: Yes, I'm challenging the
01:32:28 process.

01:32:28 THE COURT: You're not here to challenge the
01:32:29 process. I'm going to sustain. I don't think it's
01:32:31 relevant. I'm going to sustain.

01:32:33 **Q.** After Tonya Priest came to you with this
01:32:38 information, did you attempt to search for a cabin?

01:32:43 **A.** Yes.

01:32:44 **Q.** Can you please explain or describe your efforts in
01:32:48 that regard?

01:32:50 **A.** Well, we did an extensive search in August with
01:32:55 search and rescue.

01:32:56 **Q.** Okay, but that was after we filed our motion?

01:32:58 **A.** Okay.

01:32:59 **Q.** I'm talking --

01:33:00 **A.** You're asking --

01:33:01 MR. OAKES: Your Honor, I guess I'm going to
01:33:02 object to counsel's statements, critique, her
01:33:08 commentary --

01:33:08 MS. PEEBLES: It wasn't a critique.

01:33:10 MR. OAKES: -- of what took place.
01:33:12 THE COURT: I understand a critique. You
01:33:13 asked him if he searched for a cabin. Your answer was?
01:33:16 THE WITNESS: In August we made an extensive
01:33:17 search, yes.
01:33:18 **Q.** Of 2014?
01:33:20 **A.** Yes, ma'am.
01:33:20 **Q.** When Tonya Priest came to you in February of 2013,
01:33:25 between February of 2013 and June of 2013, did you make any
01:33:30 efforts to search for a cabin?
01:33:31 **A.** Yes.
01:33:32 **Q.** Okay, please explain when you did that and how you
01:33:34 did it.
01:33:35 **A.** I don't remember the exact date, but I had Mark Diss
01:33:39 (ph) from border patrol do a couple flyovers to look for a
01:33:46 cabin, specifically where Tonya Priest told me, on the
01:33:50 other side of these railroad tracks, State Route 69, State
01:33:54 Route 11 where there's a cabin, so we did a couple
01:33:59 flyovers, asked some people in that area who go out there
01:34:02 and hunt do you know of any cabins out there. No, there's
01:34:07 a bus out there.
01:34:08 **Q.** Do you know who you spoke with in connection with,
01:34:11 you know, these questions whether or not there was a cabin?
01:34:14 **A.** Yes, Ernest Peters.
01:34:16 **Q.** Who?

01:34:16 **A.** Ernest Peters.

01:34:18 **Q.** And do you remember what road he lived on?

01:34:20 **A.** He lives right there on sixty-nine. He owns some of 01:34:23 the property that we're talking about that section.

01:34:25 **Q.** Okay, so you did a couple flyovers to determine 01:34:28 whether there was a cabin?

01:34:30 **A.** Yes, ma'am, and I asked him, and he does -- goes 01:34:33 hunting, he owns part of the land, he goes out there all 01:34:36 the time, he said there's nothing out there but a bus.

01:34:38 **Q.** Okay, and after you -- after you did the two 01:34:42 flyovers, was that the sum total of your search for a cabin 01:34:47 at that time, at that time?

01:34:49 MR. OAKES: Objection, Your Honor, as to what 01:34:50 time period are we still talking about.

01:34:52 MS. PEEBLES: We're still talking about the 01:34:54 same --

01:34:54 THE COURT: February thirteenth through June 01:34:56 thirteenth, right?

01:34:57 MS. PEEBLES: Yes.

01:34:57 MR. OAKES: Just wanted to clarify, yes.

01:34:59 **A.** The flyovers and the residence, yes.

01:35:03 **Q.** Did you conduct any foot search at that point?

01:35:08 **A.** I did not.

01:35:09 **Q.** Did you use cadaver dogs?

01:35:11 **A.** I did not.

01:35:12 **Q.** Did anybody?

01:35:13 **A.** I don't know.

01:35:15 **Q.** Well, you would probably know.

01:35:18 MR. OAKES: Objection, Your Honor. The
01:35:19 witness has answered the question. Says he doesn't
01:35:22 know.

01:35:23 THE COURT: Yes.

01:35:23 **Q.** Is there anybody else that's in charge of this
01:35:25 investigation and following up on leads?

01:35:27 **A.** There is a lot of people. Lieutenant assigns a lot
01:35:30 of people follow up on leads, yes.

01:35:32 **Q.** Is there anybody else who is also assigned in
01:35:34 connection with the Heidi Allen case?

01:35:37 **A.** He assigns other people to do followups on.

01:35:40 **Q.** And who who would that be?

01:35:42 **A.** He assigned Deputy Lawton, Deputy Murray, they've
01:35:48 done followups. Investigator Bucher, Investigator Rojek.

01:35:54 **Q.** Would you be aware -- at some point would you become
01:35:58 aware of that information?

01:36:00 **A.** Yes.

01:36:00 **Q.** Now you mentioned another search in August of 2014.
01:36:07 Could you please tell me about that search?

01:36:10 **A.** We did a search of -- there's -- sixty-nine is a
01:36:15 wooded area, between sixty-nine, State Route 11, Bengal
01:36:19 Road to Red Mill Road, back to sixty-nine. We set up a

01:36:21 command post at the fire department in Parish, had search 01:36:26 and rescue help us out. We quadrant off sections to search 01:36:32 and teams went out, searched the site, stringed each 01:36:36 section, took a string and did it by zones, went back and 01:36:40 forth with the strings. If they found anything that was 01:36:43 suspicious or looked like we needed to investigate further, 01:36:46 they would call the command post and a team would go out, 01:36:50 look at the site and determine whether it was something 01:36:52 viable to search or not.

01:36:54 **Q.** And would that be referred to as a grid search?

01:36:57 **A.** Yes, ma'am.

01:36:58 **Q.** And did you bring in cadaver dogs?

01:37:01 **A.** No.

01:37:01 **Q.** Now, you also interviewed a Jonathan Barkley in 01:37:09 connection with this investigation, correct?

01:37:11 **A.** Yes.

01:37:12 **Q.** Why did you interview Jonathan Barkley?

01:37:16 MR. OAKES: Objection.

01:37:17 THE COURT: Allow it.

01:37:21 **A.** Somebody, I can't remember if it was my lieutenant, 01:37:24 I think it was my lieutenant, came to me with a sheet that 01:37:28 said a phone log on it with his name on it. Supposedly 01:37:34 Jonathan Barkley had phone contact with James Steen during 01:37:37 a time when he was up there committing his crimes up in the 01:37:42 Village of Pulaski, and they wanted me to see if he was

01:37:47 texting or calling James Steen at this time.

01:37:51 **Q.** And when you say crimes, would that have been the
01:37:54 murder of his wife?

01:37:55 **A.** Yes, ma'am.

01:37:55 **Q.** And cousin. All right. Now when you went to
01:37:58 interview Jonathan Barkley, what did you conclude after you
01:38:01 had the opportunity to speak with Jonathan Barkley?

01:38:04 MR. OAKES: Objection, Your Honor, calls
01:38:06 for -- seemingly calls for hearsay.

01:38:09 THE COURT: Well, no. I'll allow it. It's
01:38:12 not what Mr. Barkley said, it's what his conclusions
01:38:15 were based on what Barkley said.

01:38:17 **A.** My conclusion was he didn't know how these type --
01:38:23 what this one text message, he said he didn't know how it
01:38:26 got there, if it was a text message at all.

01:38:28 **Q.** Did you conclude whose phone it was?

01:38:30 **A.** Yes.

01:38:30 **Q.** Whose phone was it?

01:38:31 **A.** Jonathan Barkley.

01:38:34 **Q.** Did you conclude whether he had a relationship with
01:38:39 James Steen?

01:38:41 MR. OAKES: Objection, Your Honor. These
01:38:42 conclusions are essentially a way to backdoor the
01:38:45 hearsay statements of Mr. Barkley.

01:38:49 MS. PEEBLES: No. He made a conclusion based

01:38:51 on his conversation with him.

01:38:52 THE COURT: I'll allow it based on his
01:38:54 conversation, based on his investigation.

01:38:55 **A.** He had a relationship with James Steen, yes.

01:38:59 **Q.** And did you conclude that he had called, that
01:39:04 Jonathan Barkley had called James Steen minutes after he
01:39:09 killed his wife?

01:39:09 MR. OAKES: Objection, leading.

01:39:12 THE COURT: Sustained.

01:39:14 **Q.** What -- what more did Jonathan Barkley tell you
01:39:18 about his telephone?

01:39:19 MR. OAKES: Objection, hearsay.

01:39:20 THE COURT: That calls for hearsay, yes. I'll
01:39:22 sustain that too.

01:39:23 **Q.** Did you determine whether or not Jonathan Barkley
01:39:30 used his phone that morning?

01:39:32 **A.** Only by what he told me. I did not do a search of
01:39:38 his phone or any of that. He told me he called him that
01:39:43 morning.

01:39:44 **Q.** Did he have an explanation for the words, "Heidi
01:39:47 ciao?"

01:39:48 **A.** No.

01:39:49 **Q.** Did you tell Erica Jotka (ph), Sharon Riposa's
01:40:15 mother, that you had been saddled with this case?

01:40:19 MR. OAKES: Objection, Your Honor.

01:40:21 Argumentative, relevance.

01:40:22 THE COURT: Yeah, sustained.

01:40:24 **Q.** During your investigation with the new evidence, did
01:40:40 you ever interview Rich Murtaugh?

01:40:43 **A.** Which one?

01:40:44 **Q.** The young one.

01:40:46 **A.** Yes.

01:40:47 **Q.** When was that?

01:40:48 **A.** I don't remember the exact date. 2014. I don't
01:40:53 remember. It was a verbal conversation. I don't know the
01:41:00 exact date.

01:41:00 **Q.** In 2013 when Tonya -- between February of 2013 and
01:41:04 June of 2013, did you interview Richard Murtaugh?

01:41:10 **A.** Are you talking about Junior or -- young Richard
01:41:13 Murtaugh?

01:41:13 **Q.** Yeah, yeah, same one. I'm not asking you about the
01:41:16 older Murtaugh.

01:41:17 **A.** Yeah. He -- I interviewed him, yes.

01:41:19 **Q.** Do you remember when that was, between -- between
01:41:21 February of 2013 and June of 2013 you interviewed him?

01:41:26 **A.** Yes.

01:41:27 **Q.** Did you take a statement from him?

01:41:29 **A.** No.

01:41:29 **Q.** Did you record a statement?

01:41:32 **A.** No.

01:41:32 **Q.** Do you recall what you asked him?

01:41:38 **A.** No, I don't remember exactly what I asked him.

01:41:40 **Q.** Now, you had Jennifer Wescott's phone examined on
01:41:48 March seventh of 2013 during the course of your interview
01:41:52 with her, correct?

01:41:53 **A.** Yes, ma'am.

01:41:54 **Q.** And were her text messages captured on from her
01:42:01 phone and provided to your -- to your office?

01:42:03 **A.** Yes.

01:42:04 **Q.** And do you recall any text messages between her and
01:42:09 Richard Murtaugh?

01:42:11 **A.** With what I was provided, no.

01:42:13 **Q.** You didn't see any text messages between Jennifer
01:42:16 Wescott and Rich Murtaugh on that phone?

01:42:19 **A.** The photographs of text messages between her and
01:42:21 Richard Murtaugh, I didn't see them, no.

01:42:23 **Q.** Did you believe that there were text messages
01:42:25 between Jen Wescott and Rich Murtaugh?

01:42:28 **A.** In the -- what I was -- in what I was provided?

01:42:33 **Q.** No, in what she was telling you during the course of
01:42:35 that interview.

01:42:36 **A.** I don't know if they were on the phone, but do I
01:42:38 believe she text him? Yeah, probably.

01:42:41 **Q.** And what did you think when you learned that she had
01:42:45 text messaged Rich Murtaugh before coming down to see you

01:42:49 on March seventh of 2013?

01:42:52 MR. OAKES: Objection, relevance. Relevance.

01:42:55 THE COURT: I'll allow it.

01:42:56 **A.** I thought she was -- yeah, I want to find out what's
01:42:59 going on, like okay, why wouldn't you text him, find out
01:43:03 why she's saying this, what's going on.

01:43:05 **Q.** So you -- so you thought what about her texting Rich
01:43:11 Murtaugh before going down to see you?

01:43:14 **A.** I say yeah, that would be -- a reasonable, prudent
01:43:17 person would do that, yeah, that's, you know, what am I
01:43:20 going down there for, what is happening, what is going on.

01:43:23 **Q.** I got to ask you again now that you have the
01:43:25 transcript of the audio recording up there between Jennifer
01:43:28 Wescott and Tonya Priest, can you review that to see
01:43:31 whether or not Rich Murtaugh's name was ever mentioned
01:43:35 during that monitored phone call?

01:44:54 (Whereupon, there was a pause in the
01:46:05 proceeding.)

01:46:05 **A.** Skimming through it, I don't see his name.

01:46:14 **Q.** So when is the first time Murtaugh's name cropped up
01:46:17 in this investigation with this new evidence from February
01:46:20 of 2013?

01:46:23 **A.** I don't remember when the first time it was exactly.
01:46:27 I don't remember.

01:46:27 **Q.** Well, did you hear it before March seventh of 2013

01:46:31 when you interviewed Jennifer Wescott?

01:46:34 **A.** I don't believe so.

01:46:36 **Q.** After your investigation completed and you turned
01:46:46 over the information to the District Attorney's Office, did
01:46:51 you exonerate Steen, Breckenridge and Bohrer?

01:46:55 **A.** Well, it's not --

01:46:56 MR. OAKES: Objection as to the
01:47:00 characterization.

01:47:01 THE COURT: Sustained.

01:47:01 **Q.** By the way, I just have to ask you, when exactly did
01:47:04 you interview Jonathan Barkley?

01:47:06 **A.** It was a couple months ago. I don't remember. It
01:47:08 was last month or the month before.

01:47:09 **Q.** So recently.

01:47:10 **A.** Yeah, recently. I can't remember the exact day.

01:47:20 MS. PEEBLES: One moment please.

01:47:21 THE COURT: Sure.

01:47:23 (Whereupon, there was a pause in the
01:47:46 proceeding.)

01:47:46 **Q.** When -- when you got the -- when you were talking
01:47:54 with Tonya Priest during the investigation, did you ever --
01:47:59 well, strike that. When you were interviewing Jennifer
01:48:02 Wescott on March seventh of 2013, did you ever ask her
01:48:06 about Jessica Howard?

01:48:08 **A.** No.

01:48:09 **Q.** Did you refer back to any of the previous leads that you had regarding Roger Breckenridge?

01:48:19 MR. OAKES: Objection as to relevance, Your Honor.

01:48:21 THE COURT: I'm going to allow it.

01:48:22 **A.** Well, there was only the one that Jessica Howard and the anonymous one, so prior leads to this phone call?

01:48:30 **Q.** Right.

01:48:31 **A.** Right.

01:48:32 **Q.** Um hum.

01:48:32 **A.** Yeah.

01:48:33 **Q.** That's correct. Did you ask her about those?

01:48:36 **A.** No.

01:48:38 MS. PEEBLES: Nothing further. Thank you.

01:48:41 THE COURT: Counsel, just give me a second please.

01:48:43 MR. OAKES: Certainly, Your Honor.

01:48:44 (Whereupon, there was a pause in the proceeding.)

01:49:22 THE COURT: Go ahead.

01:49:23 MR. OAKES: Thank you very much, Your Honor.

CROSS-EXAMINATION

01:49:24 BY MR. OAKES:

01:49:24 **Q.** Good afternoon, investigator.

01:49:26 **A.** Good afternoon.

01:49:28 **Q.** You met with Tonya Priest in person in late February of 2013, correct?

01:49:34 **A.** Correct.

01:49:35 **Q.** And where did that meeting take place?

01:49:37 **A.** It was in the Grand Jury room in the DA's Office.

01:49:40 **Q.** Well --

01:49:43 **A.** Or upstairs in --

01:49:45 **Q.** Well, let me back up for a moment, I apologize. You first spoke with Tonya Priest on or about February twenty-fifth of 2013 during a recorded telephone call, correct?

01:49:56 **A.** Correct.

01:49:57 **Q.** And actually you and I both personally participated in that phone call with Ms. Priest?

01:50:03 **A.** Correct.

01:50:03 **Q.** And that was recorded, correct?

01:50:06 **A.** Correct.

01:50:06 **Q.** And ultimately turned over to the defense as far as you know?

01:50:08 **A.** Correct.

01:50:09 **Q.** And what was the purpose of reaching out to Ms. Priest at that time?

01:50:14 **A.** To investigate her coming forward naming three individuals involved in the Heidi Allen disappearance.

01:50:25 **Q.** And where was Ms. -- why did it take place by

01:50:28 telephone as opposed to in person?

01:50:30 **A.** She lived in Tennessee. She was in Tennessee.

01:50:32 **Q.** Okay. Why didn't you tell her when you get to
01:50:38 Oswego County, ma'am, give us a call? Why didn't you just
01:50:40 tell her that?

01:50:43 **A.** I wouldn't do that.

01:50:44 **Q.** Why?

01:50:44 **A.** We would want to follow up on this as soon as
01:50:47 possible.

01:50:47 **Q.** Okay, so on Monday, February twenty-fifth we spoke
01:50:50 with her by phone.

01:50:51 **A.** Correct.

01:50:52 **Q.** And by that Thursday the twenty-eighth, she had
01:50:55 actually been flown into New York by the DA's office and
01:50:59 Sheriff's Department for an in-person interview, right?

01:51:02 **A.** Correct.

01:51:02 **Q.** How many other witnesses have you seen flown in from
01:51:08 out of state to come in to be interviewed on a case?

01:51:11 **A.** That I've had dealings with?

01:51:12 **Q.** That you have been involved with.

01:51:15 **A.** None.

01:51:15 **Q.** So would you say it was exceptional that she was
01:51:17 flown in to be interviewed for this case?

01:51:20 MS. PEEBLES: I'm going to object, Judge.

01:51:21 THE COURT: I'm going to sustain. This is a

01:51:23 little bolstering.

01:51:24 **Q.** Okay, so the day then Ms. Priest flew into town on Thursday, February twenty-eighth, you met with her on that day?

01:51:31 **A.** Correct.

01:51:31 **Q.** Where did that -- where did that first meeting take place?

01:51:35 **A.** It was up in the upstairs, the Grand Jury room at the Oswego County Public Safety Center.

01:51:41 **Q.** And did that interview move to a different location at some point?

01:51:45 **A.** Yes.

01:51:45 **Q.** Moved down to the Sheriff's Department?

01:51:49 **A.** Yes.

01:51:49 **Q.** And generally could you describe for the Court how did that interview take place down at the Sheriff's Department?

01:51:57 **A.** You and I sat with Tonya Priest in my little cubicle and I interviewed her about her claims of Roger Breckenridge, James Steen and Michael Bohrer.

01:52:09 **Q.** And if you recall, how long did that meeting last for?

01:52:17 **A.** It was a couple --

01:52:19 **Q.** Ballpark.

01:52:20 **A.** Hour and a half, two hours I think. I'm not sure.

01:52:24 **Q.** Now during the end of that meeting, were attempts
01:52:27 made to contact Jennifer Wescott on Facebook?

01:52:30 **A.** Yes.

01:52:31 **Q.** At whose computer?

01:52:33 **A.** Mine.

01:52:34 **Q.** And who was attempting to locate or contact Jennifer
01:52:38 through Facebook?

01:52:39 **A.** Tonya Priest.

01:52:40 **Q.** Okay, why did you let Ms. Priest use your computer
01:52:45 for that purpose?

01:52:46 **A.** So we could get a hold of Jennifer Wescott.

01:52:49 **Q.** Were you able to get a hold of Jennifer Wescott at
01:52:52 that time?

01:52:52 **A.** No.

01:52:53 **Q.** How long if you recall, how long did you wait to see
01:52:59 if Jennifer Wescott called back or responded back to the
01:53:03 message if you recall?

01:53:04 **A.** I don't -- it was quite a while, but I can't
01:53:07 remember exactly. We waited a minute.

01:53:09 **Q.** And at the end of that meeting, by the end of that
01:53:13 interview that night, Jennifer Wescott hadn't responded
01:53:16 back to the Facebook message, correct?

01:53:18 **A.** She had not, no.

01:53:19 **Q.** And was it agreed at that time that attempts would
01:53:22 be made the following day to try to reach Jennifer Wescott?

01:53:25 **A.** Correct.

01:53:26 **Q.** Okay, and were instructions given to Tonya Priest before she left that day?

01:53:31 **A.** Yes.

01:53:31 **Q.** What were those instructions?

01:53:33 **A.** Not to make contact with Jennifer Wescott.

01:53:36 **Q.** Why not?

01:53:37 **A.** 'Cause we didn't want them talking about these claims that Tonya Priest had.

01:53:42 **Q.** But what's the big deal if they talk about the claims without you being there? What was the concern?

01:53:48 **A.** 'Cause they're going to -- they're going to have a different story, they're going to hash out their story together.

01:53:54 **Q.** Was it your intention to record the initial phone call between Tonya Priest and Jennifer Wescott?

01:54:00 **A.** Yes.

01:54:00 **Q.** Why would you want to record that phone call?

01:54:03 **A.** So I could hear what they were both saying to each other and to get to the bottom of this.

01:54:10 **Q.** Ms. Peebles was asking you about the investigation, what you based upon. To your knowledge did Tonya Priest have a telephone call with Jennifer Wescott that very evening?

01:54:23 **A.** Yes.

01:54:24 **Q.** Was that recorded?

01:54:25 **A.** No.

01:54:25 **Q.** Do you know how long it lasted for?

01:54:28 **A.** I do not know.

01:54:29 **Q.** Do you know what was said?

01:54:30 **A.** I do not know.

01:54:31 **Q.** Do you know if Tonya Priest said Dan Barney's name
01:54:34 during that conversation?

01:54:35 **A.** I do not know.

01:54:36 **Q.** Do you know if Tonya Priest made up these
01:54:38 allegations and put them in Jennifer's head?

01:54:40 **A.** I do not know.

01:54:41 **Q.** And none of us will know because Tonya Priest
01:54:44 disregarded your instructions, correct?

01:54:46 **A.** Correct.

01:54:46 **Q.** But based upon the information gathered through the
01:54:56 phone call that was recorded, and based upon the
01:55:00 information that Ms. Priest provided, you did reach out to
01:55:03 Jennifer Wescott didn't you?

01:55:05 **A.** Correct.

01:55:06 **Q.** Now at the time that you first -- well, Ms. Peebles
01:55:09 asked you did you invite her or or did you pick her up and
01:55:12 bring her in for a custodial interview.

01:55:15 **A.** She was invited in.

01:55:16 **Q.** Why?

01:55:17 **A.** Because I didn't have any reason to go pick her -- she wasn't in custody here or anything so I asked her to come in, to speak with me about this, and she came in.

01:55:24 **Q.** Okay, did you have probable cause to arrest her at that time at that point?

01:55:29 **A.** No.

01:55:30 **Q.** Did you have a legal basis to put her in custody to bring her in?

01:55:33 **A.** No.

01:55:33 **Q.** And you talked about your technique with Ms. Peebles, essentially being inviting to witnesses and being cordial to them. Can you tell us more about that technique if you would please.

01:55:48 **A.** It's just a technique to get full disclosures sort of like forensic interview. When you're relating to people, mirror them. When they laugh, you laugh, when they do whatever they do, to get them to let down their guard, let them open up to you so you can get full disclosure of what they're telling you.

01:56:09 **Q.** Would the old saying that you catch more flies with honey than vinegar, is that essentially what you're thinking about?

01:56:16 **A.** Correct, yes.

01:56:16 **Q.** Let me ask you, if you bring a witness in to an interview and you just start accusing them right off the

01:56:21 bat, do they usually keep talking?

01:56:23 A. No. They're not going to talk to you.

01:56:25 Q. So you build a rapport with them first.

01:56:27 A. Correct.

01:56:28 Q. Make them think you're on their side.

01:56:30 A. Correct.

01:56:30 Q. Gain their trust?

01:56:31 A. Correct.

01:56:32 Q. And then eventually they might disclose something to
01:56:35 you maybe they didn't intend to initially?

01:56:37 A. Correct.

01:56:37 Q. And was that the technique you were using with
01:56:40 Jennifer Wescott?

01:56:41 A. Correct.

01:56:41 Q. Now let me ask you, Ms. Peebles asked you about Dan
01:56:50 Barney, and the name Dan Barney that came up during the
01:56:55 inter -- the recorded phone call between Jennifer Wescott
01:56:58 and Tonya Priest. Do you recall the name, the initials
01:57:01 D.B. or the name Dan Barney coming up during that call?

01:57:04 A. Correct.

01:57:05 Q. Let me ask you, before that phone call on the first
01:57:10 evening that you met Tonya Priest, before that phone call
01:57:13 even occurred, had you heard the name Dan Barney?

01:57:15 A. No.

01:57:16 Q. From Ms. Priest?

01:57:18 **A.** No.

01:57:18 **Q.** Let me ask you, aside from talking about Heidi Allen, on the night that Tonya Priest came into town, did she talk to you about any other deaths?

01:57:29 **A.** Yes.

01:57:29 **Q.** Whose?

01:57:31 **A.** Wayne Priest.

01:57:33 **Q.** Okay, and what did she tell -- who was Wayne Priest to her?

01:57:37 **A.** It was her husband.

01:57:38 **Q.** Okay, and if you know, do you know how he died?

01:57:43 MS. PEEBLES: Objection, relevance.

01:57:46 THE COURT: Mr. Oakes?

01:57:48 MR. OAKES: Your Honor, the question came up regarding Dan Barney. From the meeting and throughout the course of the investigation, Ms. Priest has alleged that Dan Barney is responsible for her husband's death and also responsible for the death of Heidi Allen in 1994. Essentially this conspiracy theory that's in Ms. Priest head which goes ultimately to her credibility I think affected or impacted this investigator's assessment of her credibility.

01:58:18 MS. PEEBLES: Objection, relevance.

01:58:20 THE COURT: You raised the Dan Barney issue on your direct.

01:58:24 MS. PEEBLES: When I was asking questions regarding Tonya Priest's credibility, I wasn't allowed to explore those areas.

01:58:30 THE COURT: You were not allowed to explore his technique. You never asked the question why did you or why did you not believe Tonya Priest.

01:58:36 MS. PEEBLES: Judge, I think there was a lot more to it than that. However, if he wants to continue down this line, I'll have the opportunity I guess for --

01:58:43 THE COURT: Sure.

01:58:44 MS. PEEBLES: -- redirect.

01:58:45 THE COURT: I'll allow it. It was raised on direct.

01:58:51 **Q.** Investigator Pietroski, through the course of the investigation and your interactions with Ms. Priest, did you form an opinion regarding her credibility?

01:59:00 **A.** Yes.

01:59:01 **Q.** What was that opinion?

01:59:03 **A.** That she was not credible.

01:59:04 **Q.** Why?

01:59:05 **A.** Just her discrepancies in her story. There were several discrepancies, and when I called her out on it, she became angry.

01:59:16 **Q.** Can you explain to the Court what were those

01:59:18 discrepancies?

01:59:20 **A.** I can't remember exactly all of them. There was 01:59:23 like time frame and who was who where she would say, you 01:59:27 know, it was just different stories she was telling me.

01:59:30 **Q.** Now during the course of your investigation, did she 01:59:35 mention the name Dan Barney with relation to Vicious Circle 01:59:39 as it related to the death of her husband?

01:59:41 **A.** Yes.

01:59:42 **Q.** And did that impact your assessment of her 01:59:47 credibility?

01:59:47 **A.** Yes.

01:59:48 **Q.** Please explain how.

01:59:49 **A.** Because I believed that that was what she was -- 01:59:53 what ultimately was on her -- what she wanted, what this 01:59:57 was about is about her husband's death and about how she 02:00:01 thought he was killed, about how he was murdered.

02:00:05 **Q.** And did she suggest to you that the same people who 02:00:10 killed her husband in 2010 had also killed Ms. Allen in 02:00:15 1994?

02:00:15 **A.** Yes.

02:00:16 **Q.** Did that seem likely to you?

02:00:18 **A.** No.

02:00:18 **Q.** Did it seem kind of like a conspiracy theory to you?

02:00:21 **A.** Yes.

02:00:22 MS. PEEBLES: Objection.

02:00:22 THE COURT: Sustained.
02:00:24 **Q.** Now, Ms. Peebles asked you some questions regarding
02:00:40 Murtaugh's scrap yard. You're familiar with that
02:00:43 operation?
02:00:43 **A.** Yes, sir.
02:00:44 **Q.** And that's located in the Town of Volney?
02:00:47 **A.** Yes.
02:00:47 **Q.** Is there another scrap yard operation of that size
02:00:53 in Oswego County to your knowledge?
02:00:55 **A.** No.
02:00:56 **Q.** So if somebody was in Oswego County and wanted to
02:00:59 scrap, that's generally one of the places they go?
02:01:02 **A.** Correct.
02:01:02 MS. PEEBLES: Objection.
02:01:03 THE COURT: Sustained.
02:01:05 **Q.** Now, Ms. Peebles asked you if you listened to the
02:01:13 phone call, conversation between Tonya Priest and Jennifer
02:01:16 Wescott, and you answered yes?
02:01:18 **A.** Yes.
02:01:20 **Q.** And I think you said you listened to it a couple
02:01:22 times before you interviewed Jennifer Wescott?
02:01:24 **A.** Yes.
02:01:25 **Q.** And then during the course of your interview with
02:01:28 Jennifer Wescott, you would step out and listen to portions
02:01:31 and refer to it?

02:01:32 **A.** Correct.

02:01:32 **Q.** Would you agree with the idea that when somebody's being unknowingly recorded, they might say things they might not tell you to your face?

02:01:47 **A.** Yes.

02:01:48 **Q.** And that because they're being secretly recorded, they might say certain truths that they might not tell you during an interview?

02:01:57 **A.** Correct.

02:01:57 **Q.** And because this is in evidence, do you have the phone conversation between Tonya Priest and Jennifer Wescott in front of you?

02:02:05 **A.** The transcript, yeah.

02:02:07 **Q.** The transcript?

02:02:08 **A.** Yeah.

02:02:08 THE COURT: Is the transcript in? Was it stipulated?

02:02:11 MS. PEEBLES: Didn't move it in, but if he's stipulating, we'll move it in.

02:02:14 MR. OAKES: Sure, that's fine.

02:02:15 THE COURT: Just so I have my --

02:02:17 MS. PEEBLES: There is thirty-five.

02:02:19 THE COURT: There is two transcripts. Both of them or just one?

02:02:22 MS. PEEBLES: We can put both of them in if he

02:02:23 has no objection.

02:02:24 MR. OAKES: Well, if they're being admitted, I
02:02:27 guess admitted for the purpose of the Court to assess
02:02:30 whether those conversations would be admitted at trial,
02:02:34 I don't want to assert them -- enter them all in
02:02:36 evidence for the truth of matter asserted. I guess it
02:02:38 would be subject to the standing objection that we have
02:02:40 before.

02:02:41 THE COURT: That's how I would -- they would
02:02:43 be. Is that how you would understand it too?

02:02:45 MS. PEEBLES: Well, the audio is in for the
02:02:47 truth of the matter asserted and that's just a simple
02:02:50 transcript of it, so I don't know what the point of
02:02:52 that is, but the Court can listen to the audio
02:02:54 recording and see whether or not it matches the
02:02:56 transcripts, same with the interview, so I can't
02:02:58 really -- it's offered for the truth of the matter
02:03:00 asserted. There is no qualification regarding the
02:03:02 admission of it.

02:03:02 THE COURT: Mr. Oakes, so I make sure I have
02:03:04 my numbers right, is that Exhibit 32, Defense Exhibit
02:03:08 32 and Defense Exhibit 26?

02:03:13 MS. PEEBLES: Yeah, I think that's right.
02:03:16 Yes, that's correct, Judge.

02:03:20 MR. OAKES: Twenty-six would be the phone

02:03:22 conversation, Your Honor, and thirty-two would be
02:03:23 the --

02:03:24 THE COURT: The interview.

02:03:25 MR. OAKES: -- interview. That's correct,
02:03:26 yes, Your Honor.

02:03:27 THE COURT: Court will allow them in.

(Defendant's Exhibit No. 26 was received in evidence).

(Defendant's Exhibit No. 32 was received in
02:03:31 evidence).

02:03:31 **Q.** Investigator, looking at Exhibit 26 please, I'm
02:03:39 going to ask you to turn to page seven please, and the very
02:03:46 last line on page seven, and I would ask you to follow
02:03:49 along as I read this, and tell me if that's what it says on
02:03:52 the page if you would please. J. indicates Jennifer, T.
02:03:56 indicates Tonya. Jennifer: "I have been subpoenaed into
02:04:02 Court for the trial." Tonya: "Oh, were you really?"
02:04:05 Jennifer: "Yeah and I didn't go. Me and Roger both were."
02:04:11 Tonya: "For what?" Jennifer: "Testify for the
02:04:16 Thibodeau." Tonya: "Do you know them guys?" Jennifer:
02:04:21 "Yeah. The people that lived over on Kenyon Road that got
02:04:24 convicted of her fucking death." Tonya: "Right. That's
02:04:29 sad, Jen." Jennifer: "Crazy." Tonya: "It's gotten been
02:04:35 eating at you forever, and then on top of it, you're
02:04:37 walking around and you didn't even know Thumper told

02:04:40 everybody." Jennifer: "Nope." Tonya: "You don't know which one killed her though?" Jennifer: "No idea. As far as I know, Thibodeau." Was that the response Jennifer gave?

02:04:54 **A.** Correct.

02:04:56 **Q.** So in this secretly recorded phone call between Tonya and Jennifer Wescott, Jennifer Wescott said as far as she knew, Thibodeau killed Heidi Allen.

02:05:09 **A.** Correct.

02:05:13 **Q.** Okay. Now, Ms. Peebles asked you about searches of the area between Rice Road and State Route 69 and eleven and Bengal Road for Heidi Allen. Do you recall that line of questioning?

02:05:42 **A.** Yes.

02:05:44 THE COURT: That's the August fourth, 2014 search?

02:05:48 MR. OAKES: Yes, Your Honor. And actually what I did want to do, Your Honor, is touch back to a period between February of 2013 and June of 2013.

02:05:59 **Q.** Investigator Pietroski, it's your understanding that border patrol did multiple flyovers of that area looking for a cabin?

02:06:09 **A.** Correct.

02:06:09 MS. PEEBLES: Objection. Mischaracterizes his testimony. He said two.

02:06:12 THE COURT: I agree. He said two.

02:06:13 MR. OAKES: I believe two is multiple, Your Honor.

02:06:16 THE COURT: Use the phrase two as opposed to multiple.

02:06:19 MR. OAKES: Okay.

02:06:20 THE COURT: The term two.

02:06:21 MR. OAKES: Okay.

02:06:26 **Q.** And they were focussed on the area west of the railroad tracks and east of State Route 11?

02:06:33 **A.** Yes.

02:06:33 **Q.** And why was that?

02:06:35 **A.** Because that's where Tonya said that Steen told her where they took Heidi Allen's body, in a cabin in that location.

02:06:43 **Q.** And you said that you or other members of the Sheriff's Department talked to local residents around that area?

02:06:51 **A.** I did, yes.

02:06:52 **Q.** You did.

02:06:52 **A.** Yes.

02:06:53 **Q.** And you're actually from that area of the county aren't you, Jim?

02:06:56 **A.** Correct.

02:06:57 **Q.** You know the locals?

02:06:58 **A.** Yes.

02:06:59 **Q.** And I believe you said you spoke with a Mr. Ernest Peters?

02:07:04 **A.** Yes.

02:07:04 **Q.** He owns quite a bit of property in that area?

02:07:08 **A.** He owns property in that location where we're talking about, his mother owns across the street and she owns S & H Trailer Park. They own a lot of property in that area.

02:07:20 **Q.** And it was your understanding that Mr. Peters hunts that land quite a bit and is very familiar with it?

02:07:25 **A.** Yes.

02:07:26 **Q.** Is that why you spoke with him?

02:07:30 **A.** Yes.

02:07:30 **Q.** What did he tell you?

02:07:32 **A.** He said the only thing he knew that was out there -- I asked him if there was a cabin. Is there any structures out there. He said the only thing he knew, because he hunts out there all the time, only thing he knew was a bus out there.

02:07:46 **Q.** And you focussed on that area because that's where Tonya Priest told you to look?

02:07:50 **A.** Correct.

02:07:51 **Q.** Now, in August of -- let me back up. In late July of 2014, did you personally participate in a search of

02:08:02 property on Rice Road?

02:08:03 **A.** Yes.

02:08:04 **Q.** And a structure, old structure, old child's fort was
02:08:09 located there?

02:08:10 **A.** Correct.

02:08:10 **Q.** Is that -- in that area, that's where the cadaver
02:08:16 dog hit, correct?

02:08:17 **A.** Correct.

02:08:18 **Q.** State police cadaver dog?

02:08:20 **A.** Correct.

02:08:20 **Q.** Is that location consistent with the description
02:08:23 given by Tonya Priest?

02:08:23 **A.** No.

02:08:24 **Q.** How close is it?

02:08:28 **A.** It's not even close.

02:08:30 **Q.** I'm going to direct your attention to Monday, July
02:08:39 twenty-eighth of 2014. Did you go to a location on Rice
02:08:46 Road in the Town of Mexico?

02:08:47 **A.** Yes.

02:08:47 **Q.** And did you meet with Investigator Mark Bender of
02:08:51 the New York State Police?

02:08:52 **A.** Yes.

02:08:53 **Q.** For what purpose?

02:08:54 **A.** For a cadaver dog to do a search of the area.

02:08:58 **Q.** And were you present when the dog did its search?

02:09:00 A. Yes.

02:09:01 Q. And the dog did indicate at a spot near the fort, correct?

02:09:05 A. Correct.

02:09:05 Q. Now, based on the description that Ms. Priest gave you, were the remains of Heidi Allen supposed to be near a structure or underneath a structure?

02:09:16 A. Underneath a structure.

02:09:18 Q. The area where the dog indicated, was it under the structure that was located on the property?

02:09:23 A. No.

02:09:24 Q. Well, where was it?

02:09:26 A. It was a few feet to the west I believe it was. Like ten, twelve feet west of the building.

02:09:33 Q. Could it have been east of the building?

02:09:40 A. I'm sorry, east, yes.

02:09:41 Q. And Investigator Bender's dog did indicate on a spot you said ten, twelve feet east of where the fort had been?

02:09:52 A. Correct.

02:09:52 Q. What was the condition of that fort as you saw it at that time?

02:09:56 A. Everything was on the ground. There was no fort. It didn't look like a structure at all. Just a pile of debris.

02:10:04 Q. And in that pile of debris did you see a wood stove

02:10:08 or what had once been a wood stove anyplace?

02:10:10 **A.** No.

02:10:11 **Q.** Was that significant to you?

02:10:13 **A.** Yes.

02:10:13 **Q.** Why?

02:10:14 **A.** 'Cause Tonya Priest said that they -- Steen, Bohrer
02:10:18 and Breckenridge had put her clothes in, Heidi Allen's
02:10:23 clothes in a stove after they put her under the floorboard,
02:10:27 put her clothes in a wood stove.

02:10:28 **Q.** So therefore, the absence of a wood stove seemed
02:10:32 significant to you?

02:10:32 **A.** Yes.

02:10:33 **Q.** Now, the location where Investigator Bender's dog
02:10:39 indicated, was that spot marked off or noted so you can
02:10:44 come back to it?

02:10:45 **A.** Yes.

02:10:45 **Q.** And did you come back to it?

02:10:47 **A.** Yes.

02:10:47 **Q.** When was that?

02:10:48 **A.** It was the next morning.

02:10:49 **Q.** Who went out to that location the next morning?

02:10:52 **A.** Myself, DA's Office and Onondaga ME's Office.

02:10:58 **Q.** You said the Onondaga ME's Office. Is that the
02:11:01 Medical Examiner's Office?

02:11:02 **A.** Yes, sir.

02:11:03 **Q.** How many people from the Medical Examiner's Office went out there if you recall?

02:11:09 **A.** I think it was six.

02:11:12 **Q.** Is that multiple? Is that multiple people?

02:11:15 **A.** Yes, multiple people.

02:11:17 **Q.** Okay. And was one of those Dr. Knight, one of the medical examiners herself?

02:11:24 **A.** Yes.

02:11:25 **Q.** And a number of investigators for the office?

02:11:28 **A.** Yes.

02:11:28 **Q.** Do you recall was Dr. Shields, one of the medical examiners, was she also there as well?

02:11:34 **A.** Yes.

02:11:34 **Q.** And what was the purpose in bringing the Medical Examiner's Office to that site?

02:11:40 **A.** So they could do a forensic dig of the area.

02:11:43 **Q.** When you say forensic dig, what do you mean?

02:11:46 **A.** They're going to sift, they're going to -- we're going to dig the -- excavate the land, and they're going to sift through looking for any bone fragments, anything that might be in relation to human remains.

02:11:55 **Q.** Why bring in the ME's Office, why not just do it yourself, go out there with a pickax, start digging?

02:12:02 **A.** We have no training or skill in that. We're not skilled to do that.

02:12:06 **Q.** Okay, so who essentially determined the procedure for that forensic dig?

02:12:12 **A.** The Medical Examiner's Office.

02:12:14 **Q.** And did you -- what did you do and the other investigators do?

02:12:19 **A.** We dug with shovels and put them in -- it was cordoned off, it was in quadrants, four quadrants, east, west, south and north, so each person had a zone, dig, shovel out, put them in buckets, carry them over to sifters where the ME's Office or medical examiner's personnel were sifting it, they would pour the buckets in the sifters and sift through it.

02:12:42 **Q.** Okay. Now, in that area where you were searching, was that basically centered around a spot where the dog had indicated basically dead center?

02:12:52 **A.** Yes.

02:12:52 **Q.** And the ME's came up with a procedure to basically once they cordoned off that area, to essentially divide it into four quadrants?

02:13:03 **A.** Correct.

02:13:03 **Q.** And each deputy or investigator was assigned a quadrant?

02:13:07 **A.** Correct.

02:13:07 **Q.** And then there were four separate work stations set up from the ME's Office, correct?

02:13:11 **A.** Correct.
02:13:12 **Q.** And deputies or investigators would take their
02:13:15 buckets to a specific sifting site to the ME's so they knew
02:13:19 where the items came from?
02:13:20 **A.** Correct.
02:13:20 **Q.** And was that procedure followed throughout the day?
02:13:23 **A.** Correct, yes.
02:13:24 **Q.** And for that initial area, what depth did you
02:13:28 ultimately dig down to by hand at that point?
02:13:31 **A.** Approximately two feet.
02:13:33 **Q.** Now during the course of that day, did you observe
02:13:38 any human remains?
02:13:39 **A.** No.
02:13:39 **Q.** Did you observe any bones?
02:13:41 **A.** No.
02:13:41 **Q.** You were personally present throughout that day,
02:13:44 Jim?
02:13:44 **A.** Yes.
02:13:45 **Q.** Did anybody observe any bones?
02:13:46 **A.** No.
02:13:47 **Q.** Did any of the ME's alert you that they saw any
02:13:52 bones.
02:13:52 **A.** No.
02:13:52 **Q.** Bone fragments?
02:13:53 **A.** No.

02:13:53 **Q.** Teeth?

02:13:54 **A.** No.

02:13:54 **Q.** Anything human?

02:13:55 **A.** No.

02:13:56 MR. OAKES: Jennifer, could I get these marked please?

02:13:59 (People's Exhibits O through CC were marked for identification).

02:18:45 MR. OAKES: Your Honor, may I please approach the witness?

02:18:50 THE COURT: Yes.

02:18:50 MS. PEEBLES: Can I see?

02:18:52 MR. OAKES: Sure.

02:18:53 (Whereupon, there was a pause in the proceeding.)

02:19:05 **Q.** Investigator Pietroski, I'm handing you what's been marked for identification as Exhibits O through T. I'll ask you to take a look at them please.

(Whereupon, there was a pause in the proceeding).

02:19:33 **Q.** Are you all set?

02:19:34 **A.** Yes.

02:19:34 **Q.** Do those photographs Exhibits O through T fairly and accurately depict or show the condition of that worksite on July twenty-ninth of 2014?

02:19:48 **A.** Yes.

02:19:49 **Q.** And essentially does that show the condition of the
02:19:53 worksite before you started digging and before the
02:19:56 Sheriff's and ME's began processing the site?

02:19:59 **A.** Yes.

02:19:59 MR. OAKES: Your Honor, at this time I would
02:20:00 offer those exhibits.

02:20:03 MS. PEEBLES: I have no objection.

02:20:04 THE COURT: No objection?

(People's Exhibits O through T were received
02:20:08 in evidence).

02:20:08 **Q.** And in these photographs, investigator, there's a
02:20:11 spot marked number one with a little evidence tent, yellow
02:20:18 tent?

02:20:18 **A.** Crime scene marker, yeah.

02:20:20 **Q.** Thank you. There is the word. Is that where the
02:20:23 dog indicated?

02:20:23 **A.** Yes.

02:20:23 **Q.** And the red string that's strung around it, that is
02:20:30 actually the outline of the first dig site?

02:20:33 **A.** Yes.

02:20:33 **Q.** And who set up that outline?

02:20:35 **A.** The ME's Office, or I'm sorry, the Medical
02:20:37 Examiner's Office.

02:20:44 THE COURT: It's O through T, right?

02:20:47 MR. OAKES: I believe so, Your Honor.

02:20:54 **Q.** Now and you said on that first day, essentially you
02:21:03 worked that area around where the dog had indicated?

02:21:06 **A.** Yes.

02:21:07 **Q.** And that area was adjacent to where the structure
02:21:13 had been, basically to the east of where the structure had
02:21:15 been?

02:21:15 **A.** Yes.

02:21:17 **Q.** Now, where the structure had previously been, the
02:21:19 fort, was there some debris in that area?

02:21:22 MS. PEEBLES: Objection. How does he know
02:21:24 where the structure was?

02:21:25 THE COURT: I'll sustain that.

02:21:26 **Q.** Where the debris pile was, that was immediately west
02:21:33 of where you'd been digging where the dog had indicated?

02:21:37 **A.** Yes.

02:21:37 **Q.** Did you personally examine that area?

02:21:41 **A.** Yes.

02:21:42 **Q.** Were you trying to make a determination if or what
02:21:46 if any structure had been there?

02:21:47 **A.** Yes.

02:21:48 **Q.** And what did you observe during that period?

02:21:51 **A.** I observed some debris, old mattress, a box spring,
02:21:56 a slab of concrete, and a footprint of an outline appeared
02:22:00 to be that where a structure had been.

02:22:05 **Q.** And when you talk about the footprint or outline of the structure, were there boards there, other items there that made you think that's where the building had been located?

02:22:15 **A.** Yes, along with undisturbed -- the dirt is different on the outside, there's growth from where this debris was, where it had fallen in.

02:22:24 **Q.** So for the area where you believed the structure had been, did investigators remove some of that debris from that area and clear that area on that first day of digging?

02:22:32 **A.** Yes.

02:22:33 **Q.** For what purpose?

02:22:35 **A.** To clear off the ground so we could start digging and to check for any human remains.

02:22:40 **Q.** Okay, so that first day that you were digging, that was a Tuesday, the next day Wednesday, did you -- where did you guys dig?

02:22:50 **A.** I believe that following day we continued at the first site and then moved over to where we thought the cabin or the fort was.

02:23:03 **Q.** Okay, and where you believe the fort had been, did you dig that down to a certain depth?

02:23:10 THE COURT: Can we stop? Can counsel please approach?

02:23:13 MR. OAKES: Certainly.

02:23:14 (Whereupon, there was an off the record
02:23:14 discussion at the bench).

02:25:04 THE COURT: Go ahead, Mr. Oakes.

02:25:05 MR. OAKES: Thank you, Your Honor.

02:25:07 THE COURT: Actually should we discuss on the
02:25:08 record what we talked about up here or --

02:25:11 MS. PEEBLES: Judge, I don't have any
02:25:14 objection with regard to this line of questioning.

02:27:47 (Exhibits DD through JJ were marked for
02:27:49 identification).

02:28:16 MR. OAKES: Your Honor, may I approach the
02:28:18 witness?

02:28:18 THE COURT: Yes.

02:28:20 **Q.** Investigator, I'm going to hand you what's been
02:28:23 marked for identification as Exhibits DD through JJ. Can
02:28:27 you look through those please?

(Whereupon, there was a pause in the
02:29:08 proceeding).

02:29:08 **Q.** Are you all set?

02:29:09 **A.** Yes.

02:29:09 **Q.** Investigator, do those Exhibits DD through JJ fairly
02:29:13 and accurately depict or show the condition of that dig
02:29:17 site at various points during the process of that forensic
02:29:20 examination?

02:29:20 **A.** Yes.

02:29:21 Q. And various points between Tuesday, July twenty-ninth and Wednesday, July thirtieth of 2014?

02:29:29 A. Yes.

02:29:29 MR. OAKES: Your Honor, the People would offer DD through JJ.

02:29:32 MS. PEEBLES: No objection.

02:29:33 THE COURT: DD through JJ are in.

(People's Exhibits DD through JJ were received in evidence).

02:29:39 Q. Investigator Pietroski, on Tuesday, July twenty-ninth through Wednesday, July thirtieth, what agencies were present on the scene of that forensic examination?

02:29:50 A. Oswego County Sheriff's Office, Oswego County District Attorney's Office and Onondaga Medical Examiner's Office.

02:29:58 Q. And ultimately, let's call it excavation point one where the dog had indicated, and excavation point two, what you believed to be the footprint of a former structure, ultimately were those two sites essentially combined so there was one giant dig site across?

02:30:22 A. Yes.

02:30:23 Q. Okay, and what depth was that dug down to?

02:30:30 A. Ultimately it was dug down to approximately four feet, three and a half to four feet.

02:30:36 **Q.** Okay, and I wasn't clear, I apologize. By the end of the day on Wednesday, July thirtieth, to what point had it been dug down by hand?

02:30:45 **A.** Approximately two feet.

02:30:46 **Q.** And was that the depth that the Medical Examiner's Office felt comfortable with?

02:30:51 **A.** No. Originally, yes, but we went further. They -- Dr. Stoppacher came out and said yeah, he's never seen anything more than two feet.

02:31:03 MS. PEEBLES: Objection, relevance.

02:31:04 THE COURT: Sustained. Well, hearsay. Sustained.

02:31:07 **Q.** Did the Medical Examiner's Office leave after that Wednesday?

02:31:15 **A.** Yes.

02:31:16 **Q.** You'd indicated Dr. Stoppacher came out late that Wednesday afternoon to assess the site?

02:31:22 **A.** Correct.

02:31:23 **Q.** Okay. And based upon his assessment, don't tell me what it was, the ME's Office left?

02:31:29 **A.** Correct.

02:31:30 **Q.** Did the Sheriff's Department just stop at that point then?

02:31:36 **A.** No.

02:31:36 **Q.** Why not?

02:31:38 **A.** We continued to dig because we wanted to make sure.
02:31:41 We wanted to be absolutely sure that there was nothing.
02:31:43 **Q.** So what did you do -- in addition to what the MEs
02:31:47 did, what did the Sheriff's Department do to be absolutely
02:31:50 sure?
02:31:50 **A.** The county highway come in with an excavator and
02:31:54 excavated the site.
02:31:55 **Q.** Just the part where the dog had indicated?
02:31:57 **A.** No, the entire site where the foot -- where I
02:32:00 believed the footprint was and where we originally started.
02:32:03 **Q.** And what depth did they dig down to?
02:32:06 **A.** Approximately four feet, three and a half, or it was
02:32:09 like three feet, almost four feet.
02:32:12 **Q.** Okay, and could you describe that process for the
02:32:15 Court please?
02:32:17 **A.** We broke it up in sections. The operator would take
02:32:20 out the buckets and set them there, and we would observe as
02:32:23 he's dumping the bucket, and we would observe, we seen
02:32:28 anything that was suspicious, if we did, stop, we'd look
02:32:32 through it, but there was nothing.
02:32:33 **Q.** And when you say nothing?
02:32:34 **A.** No human remains, no bone, no bone fragments, no
02:32:37 teeth, nothing that looked like human remains or any other
02:32:43 remains, animal remains, nothing.
02:33:03 **Q.** Investigator, I'm going to show you what's been

02:33:05 marked for identification as Exhibit Y through CC.

02:33:10 MR. OAKES: Got them out of order a little
02:33:12 bit, Judge. Sorry.

02:33:21 (Whereupon, there was a pause in the
proceeding.)

02:33:25 **Q.** Do those photographs Exhibits Y through CC fairly
02:33:28 and accurately show or depict the condition of that entire
02:33:32 site once it had been dug out, excavated, on Thursday, July
02:33:36 thirty-first, 2014?

02:33:37 **A.** Yes.

02:33:38 MR. OAKES: Your Honor, the People wish to
02:33:40 offer those exhibits.

02:33:41 MS. PEEBLES: No objection.

02:33:42 THE COURT: Y through CC are in without
02:33:45 objection.

(People's Exhibit Y through CC were received
02:34:02 in evidence).

02:34:02 **Q.** And once the Sheriff's Department had completed
02:34:04 excavating with the assistance of the highway department,
02:34:07 what did you guys do?

02:34:08 **A.** We photographed the scene and backfilled it,
02:34:11 backfilled the area, put the dirt back in.

02:34:17 **Q.** Investigator, I'm going to hand you what's been
02:34:32 marked for identification as Exhibits U through X. Do
02:34:37 those photographs fairly and accurately show the condition

02:34:40 of that site once the Sheriff's Department was done
02:34:43 excavating and filled it back in?

02:34:45 **A.** Yes.

02:34:46 **Q.** And does that reflect the size of the area that was
02:34:50 examined by the Sheriff's Department?

02:34:52 **A.** Yes.

02:34:54 **Q.** Now investigator, you had indicated previously in
02:34:59 your testimony you did not believe Tonya Priest's accounts
02:35:03 of the events.

02:35:04 **A.** I'm sorry, I didn't hear you.

02:35:05 **Q.** I'm sorry, I believe you indicated that you did not
02:35:08 believe Tonya Priest's description of events or where the
02:35:11 body might be located?

02:35:12 **A.** Correct.

02:35:15 THE COURT: You didn't ask for those to be
02:35:17 moved.

02:35:17 MR. OAKES: Thank you, Your Honor. Your
02:35:18 Honor, the People would move Exhibits U through X.

02:35:21 MS. PEEBLES: No objection.

02:35:22 THE COURT: Thank you.

(People's Exhibits No. U through X were
02:35:23 received in evidence).

02:35:23 MR. OAKES: Thank you, Your Honor.

02:35:24 **Q.** Yet even though you didn't believe Tonya Priest --
02:35:32 and again, was that location consistent with her

02:35:34 description?

02:35:35 **A.** No.

02:35:36 **Q.** But nevertheless, your department and the ME's Office went out there for three days digging, correct?

02:35:43 **A.** Correct.

02:35:44 **Q.** Why?

02:35:46 **A.** We wanted to make sure.

02:35:49 **Q.** For the benefit of this defendant?

02:35:52 **A.** Correct.

02:35:52 **Q.** For the benefit of Heidi Allen's family, correct?

02:35:55 **A.** Correct.

02:35:56 **Q.** Because you recognize -- well, because you just wanted to be absolutely sure just in case.

02:36:03 **A.** Correct.

02:36:04 **Q.** Okay. But at the end of the day, you found no human remains?

02:36:11 **A.** No.

02:36:12 **Q.** Did you find anything at that site that would indicate that it was involved with the abduction and presumed murder of Heidi Allen?

02:36:19 **A.** No.

02:36:27 MR. OAKES: No further questions, Your Honor.

02:36:28 THE COURT: This would probably be a good time to take about a ten-minute recess. I'm assuming you have some redirect.

02:36:34 MS. PEEBLES: Yes, Your Honor, yes.

02:36:36 THE COURT: We'll be back at ten of.

02:36:38 (Whereupon, there was a recess.)

02:48:00 THE COURT: Investigator, consider yourself 02:48:02 still under oath, okay?

02:48:03 THE WITNESS: Yes, sir.

02:48:05 REDIRECT EXAMINATION

02:48:06 BY MS. PEEBLES:

02:48:06 **Q.** Investigator Pietroski, I want to follow up some 02:48:10 questions Mr. Oakes was asking you on his 02:48:12 cross-examination. First, with regard to the phone 02:48:13 conversation between Jennifer Wescott and Tonya Priest, you 02:48:19 mentioned something about telling Tonya Priest not to call 02:48:23 Jennifer Wescott before you had an opportunity to monitor 02:48:27 the call, correct?

02:48:28 **A.** Correct.

02:48:29 **Q.** And if I heard you correctly, what you said was we 02:48:34 didn't want them hashing out a script, is that what you 02:48:37 said?

02:48:37 **A.** It wasn't -- I didn't say script, get their story, 02:48:41 you know, have a story together all lined up.

02:48:45 **Q.** So is it your testimony in this courtroom here today 02:48:47 that that was a rehearsed conversation between Jennifer 02:48:52 Wescott and Tonya Priest?

02:48:52 MR. OAKES: Objection, Your Honor. Asking his

02:48:55 opinion on the conversation.

02:48:56 MS. PEEBLES: He opened the door, Judge. He
02:48:58 asked him whether or not there was a reason for not
02:49:01 speaking to her before. I want his opinion on what he
02:49:06 believes -- they're calling into question Tonya
02:49:07 Priest's credibility. I think it's --

02:49:09 MR. OAKES: I think the Court's opinion is
02:49:12 probably more important.

02:49:13 THE COURT: I believe the followup question
02:49:15 saying do you have any idea what the conversation was
02:49:17 that night, and you're saying are you of the opinion
02:49:20 that that conversation between Ms. Wescott and Ms.
02:49:23 Priest was rehearsed? Is that your question?

02:49:26 MS. PEEBLES: The audio recording, the one
02:49:28 that was monitored, because his concern was that they
02:49:31 were going to put together some kind of a story before
02:49:33 they had an opportunity to monitor the call. That's my
02:49:36 understanding of what he said on direct.

02:49:37 THE COURT: Well, I'll allow that question.
02:49:41 Lay some foundation as to whether or not he could have
02:49:43 an opinion based on the information he had.

02:49:45 **Q.** Listening to the phone call, you said you listened
02:49:48 to the phone call between Tonya Priest and Jennifer
02:49:51 Wescott, correct?

02:49:51 **A.** Um hum.

02:49:52 **Q.** And you knew that that was monitored by Investigator Rojek from the Oswego County Sheriff's Department, correct?

02:49:57 **A.** Yes.

02:49:57 **Q.** And you knew he was writing notes concerning questions that he wanted Ms. Priest to ask, correct?

02:50:02 **A.** He was writing notes, yes.

02:50:06 **Q.** He was writing notes, telling her what to ask Ms. Wescott.

02:50:12 **A.** I don't know his notes, I don't know what his notes were.

02:50:15 **Q.** But you -- you knew he was making notes?

02:50:17 **A.** Correct.

02:50:18 **Q.** Throughout the conversation. And typically, why is that done, Investigator Pietroski, why do you do that during a monitored call?

02:50:27 **A.** Well, he was trying to -- he's writing the questions down that he wants her to ask her, that he wants Tonya to ask Jennifer Wescott.

02:50:35 **Q.** And she's responding -- Ms. Wescott's responding as a result of the questions being asked by Tonya Priest through Investigator Rojek, correct?

02:50:43 MR. OAKES: Objection, Your Honor. I guess I have a question of foundation. Was Investigator Pietroski present when that recorded phone call took place.

02:50:51 MS. PEEBLES: He's aware of the investigation
02:50:53 and what was taking place.
02:50:54 THE COURT: I have concerns about his
02:50:55 knowledge of what is it, Rojek?
MR. OAKES: Yes.
02:50:57 THE COURT: Rojek wrote down. Ask if he has
02:50:59 knowledge of what Rojek wrote down.
02:51:01 **Q.** Well, you said you didn't know what he wrote down,
02:51:03 but you knew he wrote notes down.
02:51:05 **A.** Correct. I don't know what.
02:51:06 MR. OAKES: Objection, Your Honor. Again,
02:51:07 foundation. Was he present when this took place? Did
02:51:09 he hear about it afterwards, Rojek?
02:51:11 THE COURT: Ask if he was present.
02:51:13 **Q.** Were you present during that monitored call?
02:51:16 **A.** I was not in the room with them during this
02:51:18 monitored call, no.
02:51:19 **Q.** And you had an opportunity to listen to the call
02:51:21 though, we know that already, right?
02:51:22 **A.** Correct.
02:51:22 **Q.** And as a result of that call, that's why Jennifer
02:51:26 Wescott was brought in for the interview with you on March
02:51:30 seventh?
02:51:30 **A.** Yes.
02:51:31 **Q.** Now, regarding the credibility of Tonya Priest, I

02:51:37 want to read to you what you said during your interview with Jennifer Wescott with the transcript, and it's on page eighteen of the transcript that's in front of you.

02:51:48 THE COURT: That's thirty --

02:51:49 MS. PEEBLES: Thirty-two. Should be up on the --

02:51:52 THE COURT: I don't have the transcript.

02:52:02 **Q.** Page eighteen of thirty-two.

02:52:06 **A.** Okay.

02:52:13 **Q.** And you at some point confront her and you say, "The biggest problem I have with what you're telling me is that Tonya recorded your phone call earlier and you say that they pulled up in the white van and that she stayed out in the van," and her response is, "Well then I'll tell you what, she chopped something, because I never said anything about a white van. I don't know anything about a white van. I was at my parents' house. I just told you that from the get go," but you tell her, "Yeah, but I'm listening to the recording and it's you on the recording," and then she says, "Well, I'm telling you if you have that recording, then I was on speaker phone, there were plenty of people around my table. I mean can you pinpoint that I said that Thumper pulled into my house with Heidi Allen in a white van," and you say, "Yeah," she says, "For real?" You say, "Yeah," and she says, "'Cause that's the craziest

02:52:59 fucking shit I ever heard in my life." Do you remember her saying that in response to your questions?

02:53:03 A. Yes.

02:53:04 Q. So in essence, she's denying that she ever said anything about Thumper, Michael Bohrer and James or Roger Breckenridge bringing Heidi Allen to her house in a van that day, correct?

02:53:16 A. Correct.

02:53:16 Q. And that was pretty significant in terms of that audio recording wouldn't you say?

02:53:21 A. Correct.

02:53:22 Q. You asked her repeatedly about that statement that she made about bringing Heidi Allen over to the house in that van, correct?

02:53:28 A. Correct.

02:53:30 Q. In addition to Tonya Priest, you had that audio recording, correct?

02:53:36 A. Correct.

02:53:36 Q. As far as your investigation? You had a statement from Megan Shaw, correct?

02:53:41 A. I'm trying to remember when I took the statement from Megan Shaw.

02:53:47 Q. Well, in terms of your overt investigation between February of 2013 and June of 2013, you didn't just have Tonya Priest, correct?

02:53:55 **A.** Correct.

02:53:55 **Q.** You had a statement from Megan Shaw.

02:53:58 **A.** Correct.

02:53:59 **Q.** You had the audio recording between Tonya Priest and
02:54:03 Jennifer Wescott. You had the e-mail regarding Jessica
02:54:09 Howard and the information about Roger Breckenridge, right?

02:54:13 **A.** Correct.

02:54:14 **Q.** And you had phone records from James Thumper Steen
02:54:17 in connection with his murder trial back from 2010,
02:54:21 correct?

02:54:24 **A.** Yes.

02:54:27 **Q.** So it wasn't all about Tonya Priest, correct?

02:54:33 **A.** What wasn't all about Tonya Priest?

02:54:35 **Q.** Your investigation between February of 2013 and June
02:54:38 of 2013.

02:54:38 **A.** Correct.

02:54:39 **Q.** Now I want to talk to you about this exceptional
02:54:42 idea about bringing Tonya Priest in from Tennessee. You
02:54:46 were testifying in response to questions by Mr. Oakes. You
02:54:51 mentioned Mary Felasco on the phone talking about Tonya
02:54:55 Priest. Do you remember that, when I was asking you
02:54:58 questions on direct?

02:54:59 **A.** Correct.

02:54:59 **Q.** Mary Felasco is an attorney, correct?

02:55:02 MR. OAKES: Objection, Your Honor. I didn't

02:55:03 ask anything about Mary Felasco on cross.

02:55:06 MS. PEEBLES: He --

02:55:07 THE COURT: He didn't talk about Mary Felasco,
02:55:10 he talked about flying her --

02:55:12 MR. OAKES: Talked about flying her but not
02:55:14 Mary Felasco.

02:55:15 THE COURT: Mary Felasco was involved with her
02:55:18 flying in as I understand it from direct? I'll allow
02:55:20 it.

02:55:20 **Q.** You knew when -- by the time you flew Tonya Priest
02:55:24 in, lawyers already knew about the existence of Tonya
02:55:28 Priest, is that fair?

02:55:32 MR. OAKES: Objection. When she says lawyers,
02:55:34 who is she referring to?

02:55:35 MS. PEEBLES: Mary Felasco.

02:55:37 MR. OAKES: That's one, singular, not
02:55:39 multiple.

02:55:40 THE COURT: I'm trying to find out who Mary
02:55:42 Felasco is.

02:55:43 **Q.** Do you know who Mary Felasco is?

02:55:44 **A.** Yes.

02:55:44 **Q.** Who is Mary Felasco?

02:55:45 **A.** She is an attorney.

02:55:48 **Q.** Okay, and do you know whether or not she was an
02:55:51 attorney that took over Randy Bianco's private practice?

02:55:54 A. I do now.
02:55:56 Q. But you knew the information about Tonya Priest had
02:55:59 come in through an attorney, Mary Felasco, you did, because
02:56:03 that's what you said on your direct.
02:56:05 A. Yeah. Lieutenant Pitcher told me something that
02:56:09 Mary Felasco had told DA Oakes.
02:56:12 Q. So by the time you flew Tonya Priest from Tennessee,
02:56:16 lawyers already knew about Tonya Priest.
02:56:18 MR. OAKES: Objection, Your Honor, again, as
02:56:20 to lawyers. We're talking about Mary Felasco.
02:56:22 THE COURT: That's one person, Mary Felasco.
02:56:25 MS. PEEBLES: Mary Felasco.
02:56:27 A. I'm sorry, what was the question?
02:56:28 Q. By the time you made the decision to bring Tonya
02:56:31 Priest to New York, Mary Felasco already knew about Tonya
02:56:35 Priest's existence.
02:56:38 A. Yes.
02:56:39 MR. OAKES: Objection, Your Honor, as to
02:56:41 relevance.
02:56:42 THE COURT: I'm going to sustain for
02:56:43 relevance, and I'm not sure you can tell me what Mary
02:56:46 Felasco knows.
02:56:46 MS. PEEBLES: Well, the point is, Your Honor,
02:56:48 Mr. Oakes went out of his way to say we did this
02:56:51 extraordinary endeavor because we wanted to do

02:56:54 everything we could to bring in this woman who had
02:56:56 information about Heidi Allen, and that's simply a
02:57:01 mischaracterization. The lawyers had already knew.

02:57:02 THE COURT: Now you stopped him from using
02:57:04 the -- or actually I stopped him from using the
02:57:08 bolstering language. He simply asked what happened.
02:57:13 You can't tell me he knows what Mary Felasco knew.

02:57:25 **Q.** All right, now, as far as the investigation that you
02:57:34 did after our office became involved in this case which
02:57:42 would be sometime after June of 2014, that's where I'm
02:57:47 going to ask you some questions now.

02:57:49 **A.** Okay.

02:57:49 **Q.** Do you understand?

02:57:49 THE COURT: So after June fourteenth.

02:57:51 MS. PEEBLES: After June fourteenth, after our
02:57:53 office became involved.

02:57:54 MR. OAKES: I'm sorry, Your Honor. Are you
02:57:57 saying June fourteenth or June of 2014?

02:57:59 MS. PEEBLES: June of 2014.

02:58:01 THE COURT: The Court misspoke. June of 2014.

02:58:04 MR. OAKES: I'm asking for clarification. Are
02:58:06 you asking about after the material was sent to you in
02:58:08 June, 2013?

02:58:09 MS. PEEBLES: Yes, of course, after our office
02:58:11 became involved in June of 2014.

02:58:14 MR. OAKES: And I guess -- I guess where I'm confused, Your Honor, is material was provided to Ms. Bianco June, 2013. It wasn't until July of 2014, over thirteen months later, the Federal Public Defender's Office filed a motion, so I don't know at what point the Federal Public Defender's Office became involved, nor do I think this investigator knows when they became involved.

02:58:40 THE COURT: My understanding is the question is going to be limited to what this investigator did from June of 2014 forward.

02:58:44 MS. PEEBLES: Well, actually now that he brought it up, let me withdraw that question and ask this question.

02:58:49 **Q.** Between June of 2013 when Mr. Oakes turned over the material to Randy Bianco, between June of 2013 until June of 2014, what did you do in connection with the Heidi Allen investigation? What did you do?

02:59:08 **A.** I would have to refer to my log or my notes or --

02:59:12 **Q.** Did you do anything?

02:59:16 **A.** Yeah. We did lots of --

02:59:18 **Q.** You did?

02:59:19 **A.** We did -- see, I'm not -- I'm lost on the time you're talking about. June of 2013?

02:59:25 **Q.** June of 2013 until June of 2014.

02:59:30 **A.** I would have to refer to my log or any SJS report, a
02:59:35 report.

02:59:35 **Q.** Well, I would like you to refer to your log because
02:59:38 I'd like to know what you did between June of 2013 and June
02:59:41 of 2014 in connection with this investigation. Where is
02:59:47 your log?

02:59:49 **A.** It's in my case file.

02:59:52 THE COURT: Is that what you're looking for,
02:59:53 Mr. Oakes?

02:59:54 MR. OAKES: I'm looking for the SJS, Your
02:59:57 Honor.

02:59:57 THE COURT: The what?

02:59:58 MR. OAKES: The SJS incident report.

03:00:00 THE COURT: Okay. Do you have your log with
03:00:06 you?

03:00:06 THE WITNESS: It's at the office, sir.

03:00:10 MS. PEEBLES: I'll follow up, Your Honor. I'd
03:00:12 like the opportunity to question him about that unless
03:00:15 the information Mr. Oakes has would maybe --

03:00:17 THE COURT: That's what I'm trying to find
03:00:22 out.

03:00:44 MR. OAKES: Your Honor, I -- I don't think the
03:00:46 Sheriff's Department had an SJS incident report during
03:00:51 that time. I think there --

03:00:52 THE COURT: Can you tell me what SJS stands

03:00:54 for?

03:00:56 THE WITNESS: Spectrum Justice System.

03:01:00 MR. OAKES: That's the standard New York
03:01:02 State, New York State incident report.

03:01:04 THE COURT: Okay.

03:01:05 MR. OAKES: I don't believe that was started
03:01:06 at 2013. My understanding that CID, the Criminal
03:01:12 Investigation Division, was using a contact record
03:01:13 which I have here. If I could staple it, I'll provide
03:01:17 it to counsel so she can refer to it.

03:01:21 THE COURT: See if that refreshes your
03:01:25 recollection. Is that acceptable to you, Ms. Peebles?

03:01:27 MS. PEEBLES: Yes, Judge. Take a look at it
03:01:29 real quick.

03:02:01 (Whereupon, there was a pause in the
03:02:11 proceeding.)

03:02:11 **Q.** Oh, this isn't marked. I'm going to hand you what's
03:02:26 been marked as Defense Exhibit 32 and ask if that would
03:02:29 refresh your recollection about what you did between June
03:02:32 of 2013 and June of 2014.

03:02:36 THE COURT: You mean a hundred and thirty-two,
03:02:38 right?

03:02:39 MS. PEEBLES: One-thirty-two? What did I say?

03:02:42 **A.** Between June, 2013.

03:02:46 **Q.** Yeah.

03:02:47 **A.** And --

03:02:48 **Q.** June of 2014?

03:02:50 **A.** Okay, yes.

03:02:51 **Q.** And what did you do?

03:02:53 **A.** June twelve, 2013, spoke with Agent Mark Diss,
03:02:58 border patrol. Flew over area of Rice Road, State Route
03:03:08 11, State Route 69, Red Mill Road in April first through
03:03:12 the fifth. No cabin. Will check again on or about six-
03:03:16 fourteen and another location in the Town of Parish at
03:03:20 State Route 69 and County Route 22.

03:03:22 **Q.** And what date was that?

03:03:24 **A.** 6/12/13.

03:03:25 **Q.** All right, and what was the next entry?

03:03:28 **A.** 6/18/13. Received e-mail from Mark Diss, negative
03:03:33 results, both Rice Road area and County Route 22 and State
03:03:38 Route 69 area.

03:03:38 **Q.** And what does that mean?

03:03:39 **A.** That he did not find any structures located in that
03:03:42 area.

03:03:42 **Q.** And was that a flyover?

03:03:45 **A.** Yes, ma'am.

03:03:45 **Q.** So are there any other flyovers documented on that
03:03:49 sheet?

03:03:51 **A.** Only the two that were -- that was going to occur,
03:03:55 that there was two flyovers.

03:03:57 Q. And what else did you do between June of 2013 and June of 2014?

03:04:04 A. It's -- there's like two pages. Keep reading.

03:04:08 Q. Just give me a summary of the different entries between those dates.

03:04:12 A. Let's see. Phone contact with Elaine Jotka (ph).

03:04:17 Q. And who is Elaine Jotka?

03:04:19 A. Sharon -- Sharon's Riposa's mother.

03:04:24 Q. And did you have a conversation with her over the phone?

03:04:28 A. Yes.

03:04:28 Q. And is that the phone call where you said you were saddled with this investigation?

03:04:33 MR. OAKES: Objection, Your Honor.

03:04:34 THE COURT: What's the relevance of that term?

03:04:36 MS. PEEBLES: It was his term.

03:04:37 THE COURT: I'm asking you what's the relevance of that term.

03:04:40 MR. OAKES: That assumes facts not in evidence.

03:04:42 MS. PEEBLES: Can I ask him what he meant by that?

03:04:44 THE COURT: I want to know even if he said it what's the relevance?

03:04:47 MS. PEEBLES: I think it goes to his

03:04:48 willingness to investigate the claims of Tonya Priest
03:04:51 and they're saying she's not credible.

03:04:52 THE COURT: No, no, sustained.

03:04:57 **Q.** Did you investigate the individuals that were named
03:05:07 by Tonya Priest? We'll start with James Steen.

03:05:11 **A.** Yes.

03:05:11 **Q.** So you were familiar with Mr. Steen just because of
03:05:15 his notoriety of what he did to his wife, so you knew him,
03:05:18 right?

03:05:18 **A.** Yes.

03:05:18 **Q.** What about Michael Bohrer? Did you do a criminal
03:05:21 history check on Michael Bohrer?

03:05:25 **A.** I don't know if I did a criminal history check.

03:05:28 **Q.** Would it have been important in your investigation
03:05:31 if you knew that he had a prior conviction from -- for
03:05:34 unlawful imprisonment --

03:05:36 MR. OAKES: Objection, Your Honor. Assumes
03:05:38 facts not in evidence.

03:05:40 THE COURT: Sustained.

03:05:41 **Q.** Well, what would be -- what would you do to
03:05:45 investigate individuals for example if someone comes
03:05:48 forward and says, you know, I believe so and so is involved
03:05:52 in this particular crime, they admitted this to me, what
03:05:54 would you do? What -- what would one of the first things
03:05:59 be that you would do under those circumstances?

03:06:01 MR. OAKES: Objection, Your Honor. Irrelevant what he normally does. I think the question is what did he do in this case.

MS. PEEBLES: Well, I think --

03:06:09 MR. OAKES: It appears that Ms. Peebles' case is to attack the methodology of the Sheriff's Department rather than trying to put in proof.

03:06:18 MS. PEEBLES: Your Honor, he opened the door. He attacked the credibility of Tonya Priest. I think it's important that I'm able to establish what the basis for that opinion is and --

03:06:29 THE COURT: But he testified to that.

03:06:31 MS. PEEBLES: Yeah, well, I think I'm entitled to ask him what he did as far as his investigative efforts as compared to what he would do in a normal case.

03:06:38 THE COURT: The investigator already said that after that taped phone call, and he gave a reason, a number of reasons why he did not find Tonya Priest to be credible. Attorneys please approach.

03:06:55 (Whereupon, there was an off the record discussion at the bench).

03:11:06 THE COURT: We've had a conference at the bench. Based upon that conference, Ms. Peebles, would you please continue?

03:11:11 MS. PEEBLES: Yes.

03:11:11 **Q.** Now you -- you talked about the flyovers that you did in June. Did you document the -- were there reports I should say created in connection with those aerial views that you were trying to do when you were doing the flyovers?

03:11:28 **A.** Not on my part, no, and I do not know if Mark Diss did a report or not, but he did take photographs.

03:11:37 **Q.** All right, so after you spoke with Jennifer Wescott, you conducted some interviews?

03:11:49 **A.** Yes.

03:11:50 **Q.** And you interviewed James Steen?

03:11:52 **A.** Yes.

03:11:53 **Q.** And did you ask James Steen where he was the morning Heidi Allen was abducted?

03:12:01 **A.** I don't remember the line of questioning exactly.

03:12:10 **Q.** If I showed you the statement that you created after speaking with James Steen, would that help refresh your recollection?

03:12:16 **A.** Yes.

03:12:36 THE COURT: Ms. Peebles, should you send your next witness home?

03:12:41 MS. PEEBLES: I don't think he showed up yet.

03:12:43 THE COURT: Okay.

03:12:46 MS. PEEBLES: I mean I can -- Greg?

03:12:46 MR. OAKES: I don't know who is your witness.

03:12:47 MS. PEEBLES: No, Judge, I think we're all set.

03:13:00 THE COURT: All right.

03:13:02 **Q.** Did you ask him where he was on that morning?

03:13:05 **A.** Yes.

03:13:05 **Q.** What --

03:13:07 **A.** I believe I would have asked him. This is a written statement after I questioned him about everything, and then I asked him will you give a statement, and he said no, I'm not giving you, I'm like I just need something in writing, and he finally said okay, so then I wrote -- I would write this as he's telling me, but this is not the direct line of questioning. When I first go in, I asked him hey, this is not what I first started out, did you have anything to do with the disappearance of Heidi Allen, that's not what I started out with, but I cannot remember exactly hey, where were you. I would have asked him, yes, but I do not know exactly what -- if that was the first question.

03:13:47 **Q.** I didn't ask whether it was the first question, but would you have written it down somewhere?

03:13:52 **A.** Yes.

03:13:52 **Q.** Did you write it down somewhere?

03:13:54 **A.** I believe I took notes. I -- I don't know if I took notes or not. If I have notes, they were provided.

03:14:05 Q. So if they weren't provided, then you didn't take
03:14:08 notes?

03:14:08 A. Correct.

03:14:09 Q. So if he did tell you where he was Easter morning
03:14:14 and you didn't take notes, you don't remember what he told
03:14:18 you?

03:14:18 A. Correct. I don't remember what he told me where he
03:14:21 was.

03:14:21 Q. And that's not written down anywhere?

03:14:23 A. Not to my knowledge, no.

03:14:25 Q. Now, as far as Roger Breckenridge, did you ask
03:14:30 him -- well, strike that. You interviewed Roger
03:14:33 Breckenridge as well after you had the interview with
03:14:36 Jennifer Wescott, correct?

03:14:37 A. Correct.

03:14:38 Q. And you went to the prison to talk to him?

03:14:42 A. I believe it was Elmira.

03:14:44 Q. And again, did you ask Mr. Breckenridge where he was
03:14:49 the morning Heidi Allen disappeared?

03:14:51 A. Yes.

03:14:51 Q. And do you remember what he said?

03:14:53 A. I believe he said he was at his brother's house.

03:14:56 Q. I'm going to hand you what's been marked as
03:14:58 defense -- did you take a statement from Roger
03:15:00 Breckenridge?

03:15:01 **A.** Yes.

03:15:02 **Q.** I'm going to hand you what's been marked as Defendant's Exhibit 49 and ask if you can take a look at that document. Do you see anywhere in that statement where he mentions where he was Easter morning of April third, 1994?

03:15:26 (Whereupon, there was a pause in the proceeding.)

03:15:29 **A.** No. It doesn't say where he's at.

03:15:48 **Q.** Did you write it down anywhere other than where that statement might be?

03:15:52 **A.** I might have. I don't remember.

03:15:55 **Q.** Did you take notes where you were writing down what he was telling you that day when you were doing that statement?

03:16:03 **A.** I believe I took notes. I don't remember if I did, but if there -- if I took notes, they're in the file and they were forwarded to the DA's office.

03:16:11 **Q.** Would you agree that it would be important information where those two individuals would have been on the morning of April third of 1994 when Heidi Allen was abducted?

03:16:22 **A.** Yes.

03:16:23 **Q.** So that important information is not in either one of those statements, is that a fair statement?

03:16:28 A. Correct.

03:16:28 Q. Did you examine the Heidi Allen case file to see if any of these names had popped up during the original investigation?

03:16:43 A. Yes.

03:16:44 Q. And what did you find?

03:16:47 A. I did not find any in the lead -- the logs or the lead sheet. I don't remember Roger Breckenridge, I don't remember seeing Roger Breckenridge or James Steen.

03:17:01 Q. How about Michael Bohrer?

03:17:02 A. I don't remember seeing his name either on the lead, the leads.

03:17:05 Q. So if they weren't named on a lead sheet, there was no information about them in the Heidi Allen file?

03:17:13 A. No, not necessarily.

03:17:16 Q. So was what you did look at the lead sheets and see if you saw any of those three names?

03:17:24 A. Correct.

03:17:25 Q. And you're saying you didn't recognize any of those names on any of the lead sheets?

03:17:29 A. No.

03:17:30 Q. Do you remember when you examined the lead sheets to determine whether or not those three individuals may have been mentioned in the original investigation?

03:17:39 A. No, I don't remember.

03:17:44 Q. When you were interviewing Jennifer Wescott, she provided you with an alibi for Roger Breckenridge, do you remember that?

03:17:54 A. During the --

03:17:56 Q. During your interview with her?

03:17:57 A. Her video interview?

03:18:00 Q. Yes.

03:18:00 A. Audio interview? I don't remember.

03:18:03 Q. Do you want to look at page twenty-one of the transcript from the interview?

03:18:11 A. Okay. Whereabouts?

03:18:15 Q. At the bottom of the page where it says Jennifer, midway through the sentence it says, "I did see Roger that Easter Sunday because he came over and had dinner with me and my family," and you questioned her, "How do you remember that," and she said, "How do I remember that? Because of Easter," and you said, "Well, you've had lots of Easters," and she said, "Yeah, but that was our first Easter Sunday together because I just turned eighteen in February, so that was our first holiday, and my parents were having a fit with him even coming over," and she -- so she provided an alibi for Roger that morning.

03:18:50 A. She gave an account of where she thought he was.

03:18:54 Q. She told you he was with her, right?

03:18:56 A. That's what she said, yes.

03:18:57 **Q.** And that would have been different from what Roger told you when you took the statement, but you didn't put it in the statement, correct?

03:19:20 **A.** Yes.

03:19:26 **Q.** Now at some point you want to get a statement from Jennifer Wescott, you want her to provide you with a written statement after you have the interview, correct?

03:19:35 **A.** Yes.

03:19:36 **Q.** And she's reluctant to sign a statement initially when you first asked her to do that, right?

03:19:41 **A.** Yes.

03:19:41 MR. OAKES: Objection.

03:19:42 THE COURT: I'm going to allow it.

03:19:44 **Q.** And she was reluctant because you had that audio recording of her making admissions about knowing what happened that morning regarding Heidi Allen, correct?

03:19:52 **A.** I don't think she knew she was being audioed, I don't think it was because of that.

03:19:58 **Q.** Didn't she say, "But I don't want to sign a statement to you saying I don't know when you got that friggin tape of me saying that I know, you know what I'm saying?" And you say, "Okay, so it's not like saying it's just you running off at the mouth or whatever, I don't know. Whatever it is you did, you did. You're not in any trouble. You're going to leave here. I'm not looking at

03:20:21 jail, I'm not looking to arrest you for anything. I'm
03:20:24 looking to either corroborate what people are saying or to
03:20:27 squash this." That's what you said, right?

03:20:29 **A.** Um hum.

03:20:30 **Q.** And then she turned around and she -- she did sign a
03:20:32 statement, correct?

03:20:33 **A.** Correct.

03:20:34 **Q.** And she denied knowing anything about Heidi Allen's
03:20:41 disappearance, correct?

03:20:41 **A.** Correct.

03:20:44 **Q.** Now there comes a point in time -- now we're going
03:20:48 to jump ahead to August of 2014. You become involved in
03:20:59 this search effort -- well, you become involved in the
03:21:00 search efforts in July of 2014, you discuss regarding the
03:21:04 structure on Rice Road, right?

03:21:08 **A.** What day in July, the twenty-fourth?

03:21:10 **Q.** The end of July, the twenty-seventh.

03:21:12 **A.** Okay.

03:21:13 **Q.** So at that point you were called on to the scene
03:21:20 because our office found the structure and called your
03:21:24 Sheriff's Department, correct?

03:21:26 MR. OAKES: Objection, Your Honor. Assumes
03:21:28 facts not in evidence.

03:21:30 THE COURT: I'm not sure why it's relevant why
03:21:33 he was there. He was there.

03:21:34 Q. Well, you weren't looking for a cabin at that point, is that a fair statement?

03:21:40 A. At what point? I don't --

03:21:42 Q. In July of 2014 you weren't out in the woods looking for a cabin based on information provided by Tonya Priest.

03:21:49 A. On that day? We did flyovers for this information.

03:21:54 Q. All right, okay. I don't want to confuse you. All I want to do is ask you, you were not in the woods looking for a cabin in July of 2014 independent from what you discovered as a result of our office.

03:22:10 A. No.

03:22:10 Q. Is that fair?

03:22:11 A. Fair.

03:22:11 Q. And the reason you were there doing the excavation is because our office told you about the cabin, correct?

03:22:20 MR. OAKES: Objection, Your Honor. This is very self-grandizing and all, but I don't think it's relevant.

03:22:26 THE COURT: I don't think it's relevant either. Sustained.

03:22:28 Q. Did you ever have the soil tested at the site, and I'm not talking about sifting through looking for bone fragments, did you ever have the soil tested for chemicals regarding the decomposition of a human body?

03:22:47 A. No.

03:22:48 **Q.** Now, after this excavation, you wanted to bring Jennifer Wescott back in and talk to her again, is that correct?

03:23:00 MR. OAKES: Objection, Your Honor. Beyond the scope of cross at this point.

03:23:04 THE COURT: No, I'll allow it.

03:23:09 **Q.** You can answer.

03:23:11 **A.** Right. Because of this dig, you're saying because of this dig I wanted to bring Jennifer Wescott back in.

03:23:16 **Q.** Not because of the dig, after the dig you brought Jennifer Wescott back in to re-interview her, fair?

03:23:24 **A.** I did not.

03:23:25 **Q.** Did someone from the Sheriff's Department bring Jennifer Wescott back in to re-interview her?

03:23:30 **A.** Yes.

03:23:30 **Q.** And you knew about that, correct?

03:23:32 **A.** No, I did not until after. I knew about it after.

03:23:35 **Q.** But you're the lead investigator so you would have some knowledge of whether they were going to bring Jennifer Wescott back in for an interview, right?

03:23:42 **A.** I did not know.

03:23:43 **Q.** But you found out after?

03:23:44 **A.** Yes.

03:23:44 **Q.** And did you look at the interview or listen to the interview after it was conducted?

03:23:49 A. Yes.

03:23:50 Q. And how long was the interview?

03:23:52 A. It was a couple hours I believe.

03:23:54 Q. And did you listen to the entire interview?

03:23:56 A. Yes.

03:23:57 Q. And the results -- as a result of that interview,
03:23:59 did you want to arrange for her to have a polygraph
03:24:02 examination?

03:24:03 MR. OAKES: Objection, Your Honor, relevance.

03:24:05 THE COURT: Polygraphs aren't admissible.

03:24:07 MS. PEEBLES: I'm just asking him his
03:24:08 investigative steps, Judge.

03:24:10 THE COURT: Stop after whether or not there is
03:24:12 a polygraph requested. That's it.

03:24:15 Q. Did you make arrangements for her to take a
03:24:18 polygraph examination?

03:24:20 A. Yes.

03:24:20 Q. And after she took that polygraph examination, did
03:24:24 you want her to come back in to do another polygraph
03:24:27 examination?

03:24:29 A. I never asked her to come back in and take another
03:24:32 polygraph, no.

03:24:33 Q. Did the polygraph examiner suggest that she needed
03:24:36 to come back in for a polygraph examination?

03:24:38 MR. OAKES: Objection.

03:24:39 THE COURT: Sustained.

03:24:40 **Q.** After Jennifer Wescott was interviewed in August of 2014 at the Sheriff's Department, what did you do to follow up if anything on the information she provided?

03:25:21 **A.** August twenty -- August twenty -- can I refer to this?

03:25:26 **Q.** Well, were you still -- I guess I'll make it simple. Were you still involved in the investigation after Jennifer Wescott left the Sheriff's Department in August of 2014?

03:25:35 **A.** Yes.

03:25:35 **Q.** And what -- what were you doing to follow up on the investigation, what efforts were you making?

03:25:43 **A.** Interviews with people, there was so much I was doing I cannot -- I would have to refer to the log or the SJS report.

03:25:52 **Q.** When was the -- when was the majority of work conducted that you were doing in terms of followup investigation? When was that, when was the most you were doing, what months after August of 2014?

03:26:05 MR. OAKES: Objection, Your Honor. I -- I guess I'm not sure how this is relevant to the new evidence issue.

03:26:13 THE COURT: Why's it relevant, Ms. Peebles?

03:26:15 MS. PEEBLES: Well, I'm just seeing what Investigator Pietroski was doing after the interview

03:26:20 with Jennifer Wescott.

03:26:22 THE COURT: I know what you're trying to find
03:26:23 out. The question is why is it relevant. I'm going to
03:26:27 sustain.

03:26:28 MS. PEEBLES: Again, Judge, I just think it
03:26:30 goes to the attack on Tonya Priest's credibility.

03:26:33 THE COURT: You've never asked him any
03:26:34 questions about that.

03:26:35 **Q.** Did you ever reconsider your opinion concerning the
03:26:43 credibility of Tonya Priest?

03:26:46 **A.** Yes.

03:26:48 **Q.** And when was that?

03:26:51 **A.** Throughout this whole investigation I tried to
03:26:54 keep -- I was keeping an open mind.

03:26:59 **Q.** Was it your conclusion in June of 2013 that Tonya
03:27:05 Priest was not credible or was that a collaborative effort?

03:27:10 MR. OAKES: Objection, Your Honor.

03:27:11 THE COURT: I'm going to allow it.

03:27:13 **A.** Conclusion what date? June what?

03:27:16 **Q.** In June of 2013.

03:27:21 **A.** It was a collaboration.

03:27:23 **Q.** And who were you collaborating with when you made
03:27:25 that decision?

03:27:26 **A.** Investigator Pitcher, I'm sorry, Lieutenant Pitcher,
03:27:30 Investigator Rojek.

03:27:32 **Q.** And what was -- did you -- so you listened to the
03:27:36 interview, you sat and listened to the interview between
03:27:40 Jennifer Wescott and Investigator Rojek, you heard that,
03:27:45 right?

03:27:45 **A.** Yes.

03:27:45 **Q.** And didn't Investigator Rojek during the interview
03:27:49 say that Tonya Priest provided your office with a good
03:27:52 start?

03:27:53 MR. OAKES: Objection, Your Honor.

03:27:54 MS. PEEBLES: It's not offered for the truth.
03:27:57 State of mind.

03:27:58 THE COURT: Whose state of mind?

03:28:00 MS. PEEBLES: Mr. Rojek, Investigator Rojek.
03:28:03 He just said that it was a collaborative effort.

03:28:05 THE COURT: He can't testify to Mr. Rojek's
03:28:07 state of mind.

03:28:08 MS. PEEBLES: No, but he can testify about
03:28:10 what he saw and it's -- he can testify about what his
03:28:14 opinion is. It was a collaborative effort. Apparently
03:28:18 Investigator Rojek has a different opinion about Tonya
03:28:21 Priest and the information she provided than
03:28:23 Investigator Pietroski.

03:28:26 THE COURT: But he can't testify to what
03:28:27 Rojek's opinion is.

03:28:28 MS. PEEBLES: No, but he could say he heard

03:28:30 what it was, and I'm not offering that for the truth of
03:28:32 the matter.
03:28:32 THE COURT: What are you offering it for?
03:28:34 MS. PEEBLES: Basically to suggest that his
03:28:38 opinion of Tonya Priest's credibility didn't
03:28:41 necessarily coincide with Investigator Pietroski's.
03:28:45 THE COURT: No, I'm going to sustain the
03:28:46 objection.
03:28:47 **Q.** Why weren't you involved in interviewing Jennifer
03:28:50 Wescott in August of 2014? Why -- why weren't you the
03:28:54 investigator in the room with Jennifer Wescott asking her
03:28:57 the questions?
03:28:57 MR. OAKES: Objection, Your Honor. How is it
03:28:59 relevant? Member of the Sheriff's Department was
03:29:01 conducting an investigation, conducting the interview.
03:29:06 Why's it relevant?
03:29:07 THE COURT: First I don't know if he knows why
03:29:08 he wasn't in the room.
03:29:09 **Q.** Do you know why you weren't asked to do the
03:29:12 interview of Jennifer Wescott in 2014 of August?
03:29:16 **A.** I was off. I was not working. I was unavailable.
03:29:19 **Q.** Is that what you were told?
03:29:22 MR. OAKES: Objection, Your Honor, hearsay.
03:29:23 THE COURT: Asked and answered.
03:29:25 **Q.** Well, she didn't have to be interviewed on a day

03:29:29 that you were off. I assume you were working in the month of August.

03:29:34 MR. OAKES: Objection. Argumentative, Your Honor.

03:29:36 THE COURT: Sustained.

03:29:40 MS. PEEBLES: No further questions.

03:29:41 THE COURT: Recross?

03:29:46 MR. OAKES: Thank you, Your Honor.

03:29:49 THE COURT: Let me ask, we have a half-hour before I have to shut down. Do you want to start your recross?

03:29:56 MR. OAKES: I'll be done, Your Honor. It won't be that long.

03:29:59 THE COURT: Okay.

03:30:00 MR. OAKES: Investigator Pietroski.

03:30:02 THE COURT: You need the mike.

03:30:03 MR. OAKES: Thank you.

03:30:06 RECROSS-EXAMINATION

03:30:07 BY MR. OAKES:

03:30:07 **Q.** Investigator Pietroski, Ms. Peebles asked you if you reconsidered the credibility of Tonya Priest throughout the course of the investigation. Do you remember that line of questioning?

03:30:45 **A.** Yes.

03:30:45 **Q.** What was your response to her?

03:30:50 **A.** I said yes.

03:30:51 **Q.** Okay, because you wanted to keep an open mind?

03:30:54 **A.** Correct.

03:30:54 **Q.** Would it be fair to say that an investigation is fluid?

03:30:59 **A.** Correct.

03:31:00 **Q.** And you accept information as it comes in and makes you reconsider and reevaluate prior opinions?

03:31:06 **A.** Correct.

03:31:07 **Q.** During the course of the investigation over say the last two years, have you learned of anything that made you reassess the credibility of Ms. Priest?

03:31:17 **A.** Ultimately, no.

03:31:18 **Q.** Have you learned of information that reaffirmed or bolstered your -- your initial opinion of her credibility?

03:31:28 **A.** Through --

03:31:30 **Q.** Through the investigation.

03:31:31 **A.** Yes.

03:31:31 **Q.** Okay, in reaffirming your evaluation, again, you found Ms. Priest not to be credible?

03:31:42 **A.** Correct.

03:31:42 **Q.** Or the version that she was telling not to be credible.

03:31:44 **A.** Correct.

03:31:45 **Q.** Would that be further supported by the fact that

03:31:50 there was no cabin where she indicated it would be located?

03:31:52 A. Correct.

03:31:52 Q. And again, we keep referring to this cabin on Rice Road. Did you learn from the -- the child, he's now a man, but he was a child when it was built, did you speak with him or investigators speak with him?

03:32:06 A. Investigator spoke with him, yes.

03:32:07 Q. Okay, and he's described it as a fort, correct?

03:32:11 MS. PEEBLES: Objection.

03:32:12 THE COURT: Sustained.

03:32:12 Q. Did he give a description of it without saying what it is?

03:32:15 A. Yes.

03:32:16 Q. And did that description line up with the description Ms. Priest gave?

03:32:20 A. No.

03:32:20 Q. You were out at Rice Road, you were involved in the digging?

03:32:26 A. Yes.

03:32:26 Q. Did you see a fireplace there as Ms. Priest described?

03:32:30 A. No.

03:32:31 Q. You were also involved with the interview of Megan Shaw, May of 2013, correct?

03:32:41 A. Correct.

03:32:41 Q. And Ms. Shaw described statements that were
03:32:45 attributed to James Steen, correct?
03:32:47 A. Correct.
03:32:47 Q. Would you agree that Ms. Shaw's description, what
03:32:51 Steen told her, was vastly different than what Priest
03:32:54 claimed Steen told her?
03:32:56 A. Yes.
03:32:57 MS. PEEBLES: Objection.
03:32:58 THE COURT: What's the basis of the objection?
03:33:00 MS. PEEBLES: Vastly?
03:33:02 THE COURT: Rephrase the question with the
03:33:05 word "vast" out.
03:33:06 Q. Would you say they were different?
03:33:08 A. Yes.
03:33:08 Q. Priest claimed that Thumper, Roger Breckenridge, and
03:33:13 Michael Bohrer were involved, correct?
03:33:15 A. Correct.
03:33:15 Q. Shaw claimed that James Steen was involved with the
03:33:21 Vicious Circle motorcycle gang, correct?
03:33:25 A. Correct.
03:33:25 Q. To your knowledge, Vicious Circle, Roger
03:33:28 Breckenridge and Thumper were never members, or Michael
03:33:32 Bohrer, members of that motorcycle gang, correct?
03:33:35 MS. PEEBLES: Objection.
03:33:35 THE COURT: I'm not sure if I can -- I didn't

03:33:37 hear the end of the question.

MR. OAKES: Actually I'm re-wording it.

03:33:39 THE COURT: You're going to withdraw the
03:33:40 question?

03:33:41 MR. OAKES: I will, Your Honor, thank you.

03:33:43 Q. In the account that Ms. Priest gave, James Steen,
03:33:49 Thumper, was personally involved in kidnapping Heidi from
03:33:53 the D&W store, correct?

03:33:55 A. Correct.

03:33:56 Q. In the version that Megan Shaw told you, James Steen
03:34:00 was only a participant after the fact, after she had
03:34:03 already been kidnapped and killed, correct?

03:34:06 A. Correct.

03:34:06 Q. Would you say those are two very different accounts?

03:34:09 A. Yes.

03:34:10 Q. And when you interviewed Megan Shaw, did she tell
03:34:14 you that she had spoken with Tonya Priest about what she
03:34:18 told you?

03:34:18 A. Yes.

03:34:19 Q. And did Megan Shaw tell you that Tonya Priest, upon
03:34:23 hearing Megan Shaw's version, said, "He told me the exact
03:34:27 same story."

03:34:28 A. Yes.

03:34:29 Q. But it wasn't the exact same story was it?

03:34:32 A. No.

03:34:32 Q. Would you agree that those are -- there are
03:34:37 inconsistencies between the stories?

03:34:41 A. Yes.

03:34:41 Q. And if Ms. Priest is claiming that she heard both
03:34:43 stories, that would be an inconsistency that affects her
03:34:46 credibility?

03:34:46 A. Correct.

03:34:48 Q. Now according to Ms. Priest's version, Jennifer
03:34:55 Wescott and Roger Breckenridge lived on Rice Road in 1994,
03:35:00 April of ninety-four, correct?

03:35:01 A. Correct.

03:35:02 Q. Through your investigation, did you learn where
03:35:06 Roger Breckenridge lived in April of ninety-four?

03:35:08 A. Yes.

03:35:09 Q. Where did he live?

03:35:10 A. He lived on Kenyon Road.

03:35:12 Q. With whom?

03:35:12 A. With Tracey Breckenridge.

03:35:14 Q. His wife at the time?

03:35:15 A. Correct.

03:35:16 Q. And he lived there with his four or five kids?

03:35:18 A. Yes.

03:35:18 Q. He didn't live with Jennifer Wescott?

03:35:21 A. No.

03:35:21 Q. And actually we talked about Jennifer's eighteenth

03:35:25 birthday. She didn't turn eighteen until 1995 did she?

03:35:28 A. Correct.

03:35:29 Q. Did that fact impact your assessment of Jen Priest's
03:35:32 credibility?

03:35:32 A. Yes.

03:35:34 Q. Now during the course of the investigation, did you
03:35:38 and other investigators from the Sheriff's Department learn
03:35:41 who actually lived at Deb Vecchio's, the property where --
03:35:47 on Rice Road where Jen Wescott supposedly lived?

03:35:51 A. Yes.

03:35:52 Q. And who was that?

03:35:52 A. I don't remember her name off the top of my head.

03:35:55 Q. Darcy Purdy (ph)?

03:35:56 A. Yes.

03:35:56 Q. She lived there with her boyfriend, then fiance,
03:35:59 then husband, Tom Rathbun?

03:36:01 A. Yes.

03:36:01 Q. Had a rental agreement from the landlord?

03:36:05 MS. PEEBLES: Objection.

03:36:05 THE COURT: Calls for hearsay. I'll sustain
03:36:07 it to that extent.

03:36:09 MR. OAKES: Your Honor, admit only to show the
03:36:11 impact upon him.

03:36:11 THE COURT: I'm going to sustain to the lease
03:36:13 agreement language.

03:36:14 MR. OAKES: Okay, that's fine.

03:36:15 Q. To your knowledge, Darcy Purdy was living at the Rice Road address in April of ninety-four on the day Heidi was abducted?

03:36:28 A. Yes.

03:36:28 Q. She was living there with her fiance at the time, correct?

03:36:31 A. Correct.

03:36:32 Q. And she told you that she didn't know Jen Wescott, Roger Breckenridge, these other people?

03:36:41 MS. PEEBLES: Objection, Your Honor, hearsay.

03:36:43 THE COURT: Calls for hearsay. Sustained.

03:36:44 Q. Did she tell you whether she knew these other people?

03:36:47 MS. PEEBLES: Objection, hearsay.

03:36:48 THE COURT: Calls for hearsay.

03:36:49 MR. OAKES: I guess I'm just asking if she told him, Your Honor.

03:36:52 THE COURT: Still calls for hearsay answer.

03:36:53 MR. OAKES: Okay, that's fine.

03:36:56 Q. Did you develop any information that would support that Jennifer Wescott and Roger Breckenridge lived at the address that Tonya Priest described as being the place where Heidi Allen was brought back to and murdered?

03:37:09 A. No.

03:37:10 Q. Now when you initially spoke with Tonya Priest, she told you that James Thumper Steen made admissions to her, correct?

03:37:21 A. Correct.

03:37:22 Q. In her statements to you initially, did she ever say that she heard admissions from Roger Breckenridge?

03:37:31 A. No.

03:37:31 Q. Did she ever say that she heard admissions from Michael Bohrer?

03:37:35 A. No.

03:37:35 Q. During the course of your investigation, have you learned that Tonya Priest is now --

03:37:47 MS. PEEBLES: Objection.

03:37:48 THE COURT: I haven't heard a question.

03:37:50 MS. PEEBLES: He's going to ask --

03:37:50 THE COURT: Let him ask the question first.
03:37:52 Ask the question.

03:37:53 Q. During the course of your investigation including up to today, have you learned whether Tonya Priest has given any additional statements to any members of law enforcement?

03:38:03 A. Yes.

03:38:04 Q. Which agency?

03:38:06 A. New York State Police.

03:38:07 Q. When was that?

03:38:09 A. I believe it was January eighth. I think it was -- no, it was this week, it was Monday night, Monday night of this week, or Tuesday night, I'm sorry, Tuesday, whatever the date was.

03:38:25 Q. Tuesday, January thirteenth, 2014?

03:38:28 A. Correct.

03:38:28 Q. Was she interviewed by Investigator Andy Reed of the New York State Police?

03:38:33 A. Yes.

03:38:33 Q. Did he obtain a written statement from her?

03:38:35 A. Yes.

03:38:36 Q. Have you seen that written statement?

03:38:37 A. Yes.

03:38:37 Q. Is it consistent with the written statement she gave you in February of 2013?

03:38:42 A. No.

03:38:43 Q. How is it different?

03:38:45 MS. PEEBLES: Objection, hearsay.

03:38:48 THE COURT: Have you -- he answered he saw the statement, right, read the statement?

03:38:52 MR. OAKES: Yes, Your Honor.

03:38:53 THE COURT: He can determine whether it's inconsistent.

03:38:55 MS. PEEBLES: He already asked him if it was inconsistent. He asked him why it was inconsistent.

03:39:01 MR. OAKES: I'm not going to ask him to read. 03:39:03 I'm asking him how is it inconsistent. Counsel's asked 03:39:06 a number of questions regarding the foundation of his 03:39:08 opinion up to today and his assessment of Tonya 03:39:12 Priest's credibility. I'm simply exploring the area 03:39:15 counsel wanted to talk about.

03:39:16 THE COURT: I'll allow it.

03:39:18 Q. Is the statement that she gave -- Tonya Priest gave 03:39:20 to Investigator Andy Reed on Tuesday of this week the same 03:39:24 as the statement that she gave you in February, 2013?

03:39:27 A. No.

03:39:28 Q. How is it different?

03:39:31 A. She -- she implicates Michael Bohrer and Roger 03:39:37 Breckenridge and states that they told her that they had 03:39:42 something to do with Heidi's disappearance.

03:39:44 Q. So to Investigator Reed earlier this week, she now 03:39:48 claims that she heard oral admissions, incriminating oral 03:39:52 admissions from Roger Breckenridge.

03:39:55 MS. PEEBLES: Judge, objection.

03:39:56 THE COURT: Based on hearsay?

03:39:58 MS. PEEBLES: Yes.

03:39:58 THE COURT: Sustained.

03:39:59 Q. When she spoke with you in February of 2013, did 03:40:09 Tonya Priest indicate or did she tell you that Michael 03:40:14 Bohrer made admissions to you?

03:40:16 A. No.

03:40:16 Q. Did she tell you about ever hearing any kind of incriminating statement from Michael Bohrer?

03:40:25 A. No.

03:40:25 Q. Was the first time you heard of this claim when you read Investigator Reed's statement the other night?

03:40:30 A. Yeah.

03:40:31 Q. When you met with her in February of 2013, did Tonya Priest tell you that she ever heard incriminating admissions from Roger Breckenridge?

03:40:41 A. No.

03:40:41 Q. The first time you've ever heard of her claim about hearing those admissions was that upon reading Investigator Reed's statement the other night?

03:40:50 A. Correct.

03:40:52 Q. Would you agree that the version that she gave you almost two years ago, the statement she gave you, is different than the statement she gave Investigator Reed?

03:41:04 MS. PEEBLES: Asked and answered.

03:41:05 THE COURT: Sustained.

03:41:08 Q. Would the new allegations contained in Investigator Reed's statement that he took, does that impact your assessment of Tonya Priest's credibility?

03:41:16 A. Yes.

03:41:18 Q. How so?

03:41:18 A. She doesn't appear to be credible.

03:41:20 Q. Why is that?

03:41:21 A. She's changing her story every time she talks to
03:41:25 somebody.

03:41:26 Q. Okay, and it was that type of quality that you
03:41:31 picked up on back in February of 2013 through the spring of
03:41:35 2013 that made you not believe her?

03:41:37 A. Yes.

03:41:38 MR. OAKES: I have no further questions, Your
03:41:40 Honor.

03:41:40 MS. PEEBLES: I just have a couple followup,
03:41:42 Judge.

03:41:43 MR. OAKES: For re-redirect? She's already
03:41:46 redirected.

03:41:46 THE COURT: You're entitled as long as it's
03:41:48 limited to your questions.

03:41:50 MS. PEEBLES: It is.

03:41:50 THE COURT: Just a second, Ms. Peebles,
03:41:52 please.

03:42:06 (Whereupon, there was a pause in the
03:42:07 proceeding).

03:42:07 THE COURT: Ms. Peebles, go ahead.

03:42:14 MS. PEEBLES: Yes.

03:42:15 RE-REDIRECT EXAMINATION
03:42:16 BY MS. PEEBLES:

03:42:17 Q. The first day that you talked to Tonya Priest with Greg Oakes over the telephone, it was recorded, you were present in the room, remember that?

03:42:25 A. Yes, ma'am.

03:42:26 Q. And she asked you multiple times to take a polygraph test during that first conversation with you, isn't that true?

03:42:33 A. No.

03:42:34 Q. No?

03:42:35 A. She did not ask me, no.

03:42:37 Q. She did not --

03:42:37 A. She stated she would. She did not ask me to take a polygraph. Oh, you mean in the -- you're talking about the phone conversation.

03:42:44 Q. I'm talking about the phone conversation. Did she tell you, "I will even do it here, I want to take a polygraph," didn't she tell you that?

03:42:51 A. Right. She stated to me that she would take a polygraph.

03:42:54 Q. And she was pretty insistent that she wanted to take a polygraph.

03:42:58 A. Yeah.

03:42:58 Q. Did she ever get to take a polygraph?

03:43:00 A. No.

03:43:01 Q. Now, as far as Tonya Priest's credibility, when

03:42:17 **Q.** The first day that you talked to Tonya Priest with
03:42:21 Greg Oakes over the telephone, it was recorded, you were
03:42:24 present in the room, remember that?

03:42:25 **A.** Yes, ma'am.

03:42:26 **Q.** And she asked you multiple times to take a polygraph
03:42:31 test during that first conversation with you, isn't that
03:42:33 true?

03:42:33 **A.** No.

03:42:34 **Q.** No?

03:42:35 **A.** She did not ask me, no.

03:42:37 **Q.** She did not --

03:42:37 **A.** She stated she would. She did not ask me to take a
03:42:40 polygraph. Oh, you mean in the -- you're talking about the
03:42:43 phone conversation.

03:42:44 **Q.** I'm talking about the phone conversation. Did she
03:42:47 tell you, "I will even do it here, I want to take a
03:42:50 polygraph," didn't she tell you that?

03:42:51 **A.** Right. She stated to me that she would take a
03:42:54 polygraph.

03:42:54 **Q.** And she was pretty insistent that she wanted to take
03:42:57 a polygraph.

03:42:58 **A.** Yeah.

03:42:58 **Q.** Did she ever get to take a polygraph?

03:43:00 **A.** No.

03:43:01 **Q.** Now, as far as Tonya Priest's credibility, when

03:43:09 she's talking to you on the phone during this recorded
03:43:12 conversation, she's telling you that she thinks the van is
03:43:15 in a particular location, correct?

03:43:18 **A.** Which van?

03:43:19 **Q.** The van that was used in the abduction of Heidi
03:43:22 Allen.

03:43:23 **A.** Yes.

03:43:24 **Q.** Okay, so she's theorizing where she thinks this van
03:43:27 is, correct?

03:43:28 **A.** Correct.

03:43:28 **Q.** And she thinks that the van is on blocks or some
03:43:32 place off Fernwood, correct?

03:43:34 **A.** Correct.

03:43:34 **Q.** She has no idea about the van being junked, correct?

03:43:40 MR. OAKES: Objection, Your Honor. Assumes
03:43:41 facts not in evidence and calls for speculation whether
03:43:44 she has any idea.

03:43:45 THE COURT: It's also beyond the scope of
03:43:47 redirect. I mean of cross.

03:43:49 MR. OAKES: That too.

03:43:50 MS. PEEBLES: It really isn't in terms of
03:43:53 establishing her credibility, Judge.

03:43:59 **Q.** The point is Tonya Priest did not know everything
03:44:03 about what happened with Heidi Allen in connection with
03:44:07 Thumper, Roger Breckenridge and Michael Bohrer, correct?

03:44:12 MR. OAKES: Objection. Calls for speculation.

03:44:14 THE COURT: Sustained.

03:44:19 **Q.** Now, you say that there's these inconsistencies with 03:44:27 things that she's told you because things are being added 03:44:29 on, is that fair to say, she's adding things to what she 03:44:32 initially told you?

03:44:34 **A.** Part of it, yes.

03:44:36 **Q.** Now when she came to be interviewed here in New York 03:44:39 from Tennessee, did you tape that interview with Tonya 03:44:44 Priest?

03:44:44 **A.** No.

03:44:45 **Q.** Why not?

03:44:46 **A.** 'Cause we sat at my desk so I could do a written or 03:44:51 type a statement because my handwriting's atrocious and to 03:44:54 keep track of it and get it clear and concise and have 03:44:58 somebody go back and refer to, so I did it on a written 03:45:02 statement on my desk as I'm typing.

03:45:04 **Q.** But you could have taped her if you wanted to.

03:45:05 **A.** Oh, yeah, yes.

03:45:07 **Q.** You just chose not to.

03:45:08 **A.** Correct.

03:45:09 **Q.** Now, as far as Tonya Priest, you knew that she was 03:45:16 involved with this group of people, she -- she told you 03:45:20 that she worked at East Coast Resorts for a time with 03:45:24 Michael Bohrer?

03:45:27 A. I don't remember exactly --

03:45:29 Q. Well --

03:45:30 A. -- that statement. I don't remember that exact statement.

03:45:32 Q. You knew she had relationships with Michael Bohrer, Roger Breckenridge and James Steen, correct?

03:45:40 A. I don't -- I don't know if she had relationships with them, no.

03:45:45 Q. Well, she knew them, correct?

03:45:49 A. That's what she stated, yes.

03:45:50 Q. She didn't just pick these people out of the sky, she had relationships. She -- she had interaction with them, correct?

03:45:56 MR. OAKES: Objection. Asked and answered.

03:45:58 THE COURT: Sustained.

03:45:58 Q. Did you ever hear the term "minimization" when it comes to individuals making admissions about what they have done as far as criminal activity? Did you ever hear that term before?

03:46:12 A. Sure.

03:46:12 Q. What does that mean?

03:46:13 MR. OAKES: Objection.

03:46:14 THE COURT: Yeah. This is way way beyond the scope.

03:46:16 MS. PEEBLES: I would argue that it's not, 03:46:18 Your Honor, simply --

03:46:19 THE COURT: How?

03:46:19 MS. PEEBLES: Well, because they're nitpicking 03:46:21 different versions of the way people are saying 03:46:24 something on a crime that occurred twenty years ago, 03:46:26 and they're third party admissions, and it's a term 03:46:29 that's used in law enforcement.

03:46:31 THE COURT: I'm familiar with the term.

03:46:32 MS. PEEBLES: When it comes to inconsistencies 03:46:35 and why there would be inconsistencies in a variety of 03:46:38 ways that people would hear things.

03:46:42 THE COURT: The only way that I will allow 03:46:44 that is if you deal specifically with the issue of the 03:46:48 Shaw statement.

03:46:49 MS. PEEBLES: Okay, and that's what I'm 03:46:51 referring to, Judge.

03:46:52 THE COURT: Okay.

03:46:54 **Q.** As far as the admission by Steen to Megan Shaw, 03:47:04 would that be what you would refer to in law enforcement as 03:47:08 minimization?

03:47:11 **A.** Admission of what?

03:47:13 **Q.** That he was only involved in the disposal of Heidi 03:47:16 Allen's body and not necessarily in her murder.

03:47:20 MR. OAKES: Objection. Speculation, Your 03:47:21 Honor.

03:47:21 THE COURT: Sustained.

03:47:22 MS. PEEBLES: He can answer it. He knows.

03:47:23 THE COURT: You haven't laid a proper
03:47:26 foundation to see if he knows that at all first, and
03:47:28 the only way you can argue minimization is if he said
03:47:31 to Shaw twenty years ago I killed, and then eighteen
03:47:34 years later says oh, I just disposed of the body.

03:47:37 **Q.** All right, we know that the admissions that Steen
03:47:39 made to Tonya Priest were in the year of 2006 according to
03:47:43 what Tonya Priest told you?

03:47:45 MR. OAKES: Objection. I'm not sure we know
03:47:48 that.

03:47:52 THE COURT: There were prior -- alleged prior
03:47:58 disclosures to Tonya Priest, correct?

03:48:00 MS. PEEBLES: Correct, right.

03:48:02 **Q.** Okay, and those -- and you -- as far as you knew,
03:48:04 what Tonya Priest was telling you, those occurred in 2006?

03:48:08 **A.** She mentioned 2006, yes.

03:48:10 **Q.** Now we're going to jump ahead to 2010 with regard to
03:48:14 the statements that Megan Shaw said -- the admissions Megan
03:48:20 Shaw said Steen made to her.

03:48:22 **A.** Okay.

03:48:22 **Q.** Do you understand?

03:48:23 **A.** Um hum.

03:48:23 **Q.** So in that version, he minimizes what he did in

03:48:28 connection with Heidi Allen's abduction.

03:48:31 MR. OAKES: Objection, Your Honor, as to
03:48:32 characterization, speculation.

03:48:34 THE COURT: Still speculative.

03:48:38 MS. PEEBLES: Well, you --

03:48:38 THE COURT: If you ask a question of if it's
03:48:40 true what he told --

03:48:42 MS. PEEBLES: Okay.

03:48:43 THE COURT: -- Tonya Priest, and if it's true
03:48:47 what he told or then that would be an argument for
03:48:50 minimization.

03:48:52 **Q.** If it's true what he told Tonya Priest in 2006
03:48:55 versus what he -- if it's true what he told Megan Shaw in
03:49:00 2010, that would be minimization, correct?

03:49:02 **A.** Yes.

03:49:04 **Q.** And that's not uncommon in cases where an individual
03:49:08 is making admissions, correct?

03:49:10 MR. OAKES: Objection to foundation for its
03:49:12 not being in.

03:49:16 THE COURT: Sustained.

03:49:18 MS. PEEBLES: I have no further questions.

03:49:18 MR. OAKES: Very briefly if I may.

03:49:20 THE COURT: You better because we are running
03:49:23 out of the clock.

RE-RECROSS-EXAMINATION

03:49:36 BY MR. OAKES:

03:49:36 **Q.** Ms. Peebles just -- Ms. Peebles asked you assuming
03:49:47 for the purpose of this -- your testimony, this question,
03:49:51 that James Steen made an admission to her in 2006, that's
03:49:55 what Tonya Priest told you?

03:49:57 **A.** Correct.

03:49:57 **Q.** In assessing her credibility, did you ask her why
03:50:01 she waited seven years to come forward to talk with you?

03:50:04 **A.** Yes.

03:50:05 **Q.** What was her response?

03:50:08 MS. PEEBLES: Objection. Hearsay and beyond
03:50:10 the scope of my re-redirect.

03:50:13 THE COURT: Oh, no, because if this is looking
03:50:14 into the issue of the minimization, I think it's very
03:50:18 relevant to the issue of the allegation of minimization
03:50:21 but it does call for hearsay.

03:50:23 MR. OAKES: Okay.

03:50:26 THE COURT: If you can get to it some other
03:50:28 way.

03:50:29 **Q.** Did she provide -- well, did she tell you why she
03:50:41 was coming forward now as opposed to 2006? Why she came
03:50:47 forward in 2013 versus 2006?

03:50:50 **A.** Tonya Priest?

03:50:51 **Q.** Yes, I'm sorry.

03:50:52 **A.** Yes.

03:50:53 **Q.** Why?

03:50:54 **A.** 'Cause she said she wanted -- she wanted to look into it to see if this was for real.

03:50:59 **Q.** Okay, but the fact that she had waited seven years to come forward after hearing this, did that impact your assessment of her credibility?

03:51:09 **A.** Yes.

03:51:09 **Q.** Ms. Peebles asked you if your initial interview of Tonya Priest was recorded. It was not recorded, correct?

03:51:15 **A.** No.

03:51:16 **Q.** But you took a written statement from her on that night, correct?

03:51:19 **A.** Yes.

03:51:20 **Q.** Did you limit her ability to what she could say in that statement?

03:51:25 **A.** No.

03:51:26 **Q.** And after you typed up that statement, did you let her review it?

03:51:31 **A.** Yes.

03:51:31 **Q.** Did you ask her if she wanted to add anything to it?

03:51:34 **A.** Yes.

03:51:34 **Q.** Did she want to add anything to it?

03:51:36 **A.** No.

03:51:38 MR. OAKES: Your Honor, I'm approaching with Exhibit 35 and I'm showing the investigator Exhibit

03:51:47 No. 1, tab number one under Exhibit 35.

03:51:50 **Q.** Is that the three-page written statement that Tonya
03:51:55 Priest gave to you on February twenty-eighth of 2013?

03:51:58 **A.** Yes.

03:51:59 **Q.** And in that statement does she say anywhere that
03:52:03 Michael Bohrer made admissions to her?

03:52:05 **A.** No.

03:52:06 **Q.** In that statement does she say anywhere that Roger
03:52:09 Breckenridge made admissions to her?

03:52:11 **A.** No.

03:52:21 MR. OAKES: No further questions, Your Honor.

03:52:23 THE COURT: Investigator, you can step down.

03:52:25 THE WITNESS: Thank you.

03:52:28 THE COURT: Court stands in recess until
03:52:32 February third at nine o'clock. Attorneys please
03:52:38 approach.

(Conclusion of Proceeding).

* * *

C E R T I F I C A T E

I, JENNIFER ADYDAN, an Official Court Reporter in and for the State of New York, Fifth Judicial District, do hereby certify that the foregoing is a true, complete and accurate transcript of my stenographic notes taken in the above-entitled matter and the whole thereof to the best of my ability.

Jennifer Adydan

Jennifer Adydan
Official Court Reporter

DATED: January 28, 2015

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF OSWEGO: CRIMINAL TERM:

---------------------------------------x

THE PEOPLE OF THE STATE OF NEW YORK

Indict. No.
94C-0161

HEARING
VOLUME 6

- against-

GARY THIBODEAU,

Defendant.

---------------------------------------x

Oswego County Courthouse
25 E. Oneida Street
Oswego, NY 13126

DATE: February 3, 2015

Before:

HONORABLE DANIEL R. KING
Acting County Court Judge

Appearances:

GREGORY S. OAKES, ESQ.
District Attorney, Oswego County
MARK M. MOODY, ESQ.
Chief Assistant District Attorney

OFFICE OF THE FEDERAL PUBLIC DEFENDER
BY: LISA PEEBLES, ESQ., Public Defender
RANDI JUDA BIANCO, ESQ., Assistant Public Defender

Defendant is present

08:26:58

08:26:58

INDEX TO WITNESSES

	Direct	Cross	Redirect	Recross
FOR THE PEOPLE:				
None				
FOR THE DEFENDANT:				
Joseph Fahey	--	915	969	--
William Pierce	973	979	1041	1045
Ronald Clarke	1048	1056	--	--
Carl Robinson	1066	1082	--	--
Reuel Todd	1085	1114	1122	1123

INDEX TO EXHIBITS

	Identification	Evidence
FOR THE PEOPLE:		
KK. 5/18/95 witness list	916	917
LL. 2/2/95 letter	929	930
MM. 4/16/94 lead sheet	931	934
NN. Notice of motion	932	934
OO. Lead sheet	935	--
PP-1. Yerdon report	953	--
PP-2. Yerdon report	953	--
PP-3. Yerdon report	953	--
QQ. 5/25/95 letter	958	--
RR. 5/30/95 letter	959	--
SS. 6/5/95 documents	960	--
TT. Post-Standard article	964	--

UU.	Gas station photo	992	--
VV.	Gas station photo	1003	--
WW.	Gas station photo	1003	--
XX.	7/25/14 statement	1006	--
YY.	Gas station photo	1020	1022
ZZ.	Gas station photo	1020	1022
AAA.	7/26/94 Post-Standard	1027	1028
BBB.	7/26/94 Herald Journal	1029	1029
CCC.	7/24/94 Herald American	1029	1029
DDD.	Lineup	1035	1038
EEE.	Lineup	1038	1039

FOR THE DEFENDANT:

132.	Photo of van	--	1113
138.	Photo of James Steen	--	1125
144.	Complaint card	--	1095

09:02:48 THE COURT: Is the defense ready to move forward today?

09:02:50 MS. PEEBLES: We are, Your Honor.

09:02:51 THE COURT: And are the People ready?

09:02:53 MR. OAKES: Yes, Your Honor, thank you.

09:02:54 THE COURT: Before you call your first
09:02:56 witness, the Court is going to disclose now that the
09:02:58 Court is not available tomorrow, the Court has a
09:03:00 funeral to attend, therefore there will be no court on
09:03:03 Wednesday. It will continue on Thursday and Friday of
09:03:06 this week. If necessary, it looks like it will in fact
09:03:09 be necessary, the Court has also cleared its calendar
09:03:11 to come back down the week of March twenty-third, not
09:03:15 starting Monday the twenty-third, but starting Tuesday
09:03:17 the twenty-fourth and for the remainder of that week.
09:03:20 If it's -- when we come back in March, I'll try to have
09:03:24 another week or so clear if necessary to come back
09:03:26 down, okay?

09:03:28 MR. OAKES: Yes.

09:03:29 THE COURT: Okay?

09:03:29 MS. PEEBLES: Yes, Judge.

09:03:30 THE COURT: Sorry about tomorrow. Obviously
09:03:33 you can't plan those things. The Court is also in
09:03:35 receipt of the Sheriff's Department's response to the
09:03:38 defense subpoenas duces tecum. Do you want copies of

09:03:41 this? How do you want me to provide this to you?

09:03:43 MS. PEEBLES: Copies would be fine, Judge.

09:03:44 THE COURT: Copies, okay. I'll provide copies
09:03:46 to you, copies to the DA. Ms. Peebles and Ms. Bianco,
09:03:57 you submitted a motion this morning. The Court's not
09:03:59 going to rule on that this morning so the People have
09:04:02 time to respond. Mr. Oakes, how long will it take you
09:04:04 to respond to that?

09:04:05 MR. OAKES: If we can respond by the end of
09:04:07 the week, Your Honor.

09:04:07 THE COURT: That's fine, that's fine. Any
09:04:10 objection to that?

09:04:10 MS. PEEBLES: No, Your Honor.

09:04:11 THE COURT: Okay, to the media I'd like to
09:04:15 compliment you for how respectful you were to the Court
09:04:18 last time you were here. I'm assuming that will
09:04:20 continue. There were several requests that the Court
09:04:22 had not responded to until this morning. The requests
09:04:25 have been granted. There was some conditions, mainly
09:04:28 to you, Mr. O'Brien, the transcript that you requested,
09:04:32 contact the steno and you pay for it, okay, but I do
09:04:36 appreciate the respect you're showing to the Court and
09:04:39 I'm going to ask that continue. For new people in the
09:04:42 courtroom, this is very emotional. The Court
09:04:45 recognizes that. But it's an open court. That does

09:04:49 not mean it's open to participation by anybody unless
09:04:52 you were in front of the gate, the fence so to speak.
09:04:55 If there is any disturbance in the Court, I will not
09:04:59 hesitate to ask you to be removed by one of the
09:05:01 gentlemen in the black uniforms. It's open court, it's
09:05:04 not open mike. Everybody was very respectful the first
09:05:07 week. I have no doubt that will continue, but please
09:05:09 understand if it doesn't continue, I have no hesitancy
09:05:12 having you removed from the courtroom, okay? Thank
09:05:15 you. Back on the record. Call your first -- well,
09:05:19 continued witness.

09:05:21 MS. PEEBLES: Judge Fahey.

09:05:23 THE COURT: Judge Fahey. Ms. Peebles, you
09:05:37 hadn't finished with Judge Fahey, so we all acknowledge
09:05:39 he's here for cross-examination today?

09:05:41 MS. PEEBLES: Yes, Judge, that's correct.

09:05:42 THE COURT: Okay. The Court will also
09:05:50 acknowledge some additional witnesses provided by the
09:05:53 defense and some additional witnesses provided by the
09:05:55 People. I'm assuming the two of you have exchanged
09:06:00 those?

09:06:00 MS. PEEBLES: I have, Judge, yes.

09:06:01 MR. OAKES: Yes, Your Honor.

09:06:02 THE COURT: Hi, Judge, how are you?

09:06:04 THE WITNESS: Good. How are you?

09:06:06 THE COURT: Good, thank you.

09:06:06 THE CLERK: Raise your right hand, left on the
09:06:09 Bible.

JOSEPH FAHEY, Called as a witness, having been
09:06:12 duly sworn, was examined and testified as follows:

09:06:12 THE CLERK: Please state your name for the
09:06:17 record.

09:06:17 THE WITNESS: Joseph Fahey.

09:06:18 THE CLERK: Thank you.

09:06:19 THE COURT: Judge, before we start with your
09:06:22 cross-examination, I'm going to ask you if you consent
09:06:24 to having your testimony audio and video taped.

09:06:27 THE WITNESS: No.

09:06:27 THE COURT: Thank you.

09:06:34 CROSS-EXAMINATION

09:06:34 BY MR. MOODY:

09:06:35 **Q.** Good morning, Judge Fahey.

09:06:45 **A.** Good morning.

09:06:45 **Q.** During the time that you represented Gary Thibodeau,
09:06:58 you and Judge Walsh were well, not necessarily working hand
09:07:01 in hand, you were cooperating with each other, is that a
09:07:04 fair statement?

09:07:05 **A.** Yes. I would say that's a fair statement.

09:07:07 **Q.** And in part, that was because in a sense you had
09:07:12 both of your clients, both Mr. Walsh's client and your

09:07:18 client had alibi defenses, and they were charged with being
09:07:20 at the D&W that morning together, is that accurate?

09:07:23 **A.** I'm not sure about his defense. Gary's defense was
09:07:33 an alibi defense that he was home at the time.

09:07:35 **Q.** Well, you put in a number of witnesses that alibied
09:07:38 Richard Thibodeau in the trial, is that accurate?

09:07:42 **A.** I don't recall.

09:07:42 **Q.** Well, if I were to show you the witness list that
09:07:53 you provided, would that refresh your recollection to a
09:07:56 certain extent?

09:07:57 **A.** I'd certainly be happy to look at it. My
09:08:00 recollection is that Sharon primarily was his alibi
09:08:02 witness.

09:08:04 THE COURT: Will you identify Sharon?

09:08:06 THE WITNESS: Sharon. Sharon Raposa
09:08:08 Thibodeau.

09:08:08 THE COURT: Thank you.

09:08:48 (Defendant's Exhibit KK was marked for
09:08:49 identification.

09:08:49 **Q.** Showing you Exhibit KK, I'm going to ask you if you
09:08:51 recognize that.

09:08:52 **A.** That appears to be the witness list that I submitted
09:08:59 in May of 1995.

09:09:01 **Q.** Okay, and there are some handwritten notes on there.
09:09:06 I assume that's not your handwriting?

09:09:07 **A.** That is not.

09:09:08 **Q.** Okay, but other than the handwriting, does it fully and fairly and accurately represent the witness list that you provided?

09:09:14 **A.** As best I recall.

09:09:17 MR. MOODY: Showing Exhibit KK to defense counsel, Judge, I move to admit.

09:09:24 MS. PEEBLES: No objection.

09:09:26 THE COURT: KK is moved in without objection.

(People's Exhibit KK was received in evidence). 09:09:33

09:09:33 **Q.** Judge, if you could take a look at that.

09:09:34 **A.** Sure.

09:09:35 **Q.** I'm going to ask you some specific questions about some of the witnesses on there. We'll start with Theresa Crawford. Is she on that witness list?

09:09:44 **A.** Yes.

09:09:44 **Q.** And Theresa Crawford was the live-in girlfriend of Richard Thibodeau, is that accurate?

09:09:51 **A.** As I recall, yes.

09:09:52 **Q.** And she would have been one of the alibi witnesses for Richard Thibodeau, would that be accurate?

09:09:58 **A.** I don't know.

09:10:00 **Q.** Did you call her at the trial?

09:10:01 **A.** I don't recall.

09:10:02 **Q.** If I were to show you the trial transcript, would that refresh your recollection?

09:10:06 **A.** It might.

09:11:04 **Q.** I apologize, Judge.

09:11:06 **A.** It's all right.

09:11:07 **Q.** The trial transcript's a little bit worse for wear. Turning to page twenty-two fifty-nine of the trial transcript, showing you that.

09:11:57 **A.** I apparently did call her as a witness.

09:11:59 **Q.** Okay, and additionally there, without going into much -- there's a number of Coreys (ph) on the witness list that is Exhibit KK.

09:12:09 **A.** A number of what?

09:12:10 **Q.** Coreys?

09:12:11 **A.** Yes.

09:12:11 **Q.** There's Leona, who I believe is Theresa Crawford's grandmother, is that accurate?

09:12:16 **A.** I recall the Coreys being related to Theresa Crawford. Exactly the relationship I don't recall now.

09:12:22 **Q.** And to your knowledge, they -- did you call them at the trial?

09:12:25 **A.** I honestly don't recall.

09:12:27 **Q.** Well, if you want to turn to the front of the volume that you have in front of you, there is an index of witnesses in there. Specifically turning now to Page D of

09:12:43 the exhibit list, and starts with "for the defendant," if
09:12:46 you could just review that and see if it refreshes your
09:12:48 recollection as to whether you called, for example, Leona
09:12:52 Corey.

09:12:53 **A.** I -- the exhibit reflects that I did.

09:12:56 **Q.** Okay, and you also called John Corey who I believe
09:13:00 is, or no, actually I don't think that -- you called Dwayne
09:13:04 Corey I believe.

09:13:05 **A.** That's what the exhibit reflects.

09:13:08 **Q.** If all of those people were alibi witnesses for
09:13:12 Richard Thibodeau, part of your defense was also alibi-ing
09:13:16 Richard, would that be accurate?

09:13:18 **A.** It may be. I don't really have a specific
09:13:23 recollection of that.

09:13:24 **Q.** Well, part of the issue at the trial was whether or
09:13:26 not Richard's van was seen by Christopher Bivens or whether
09:13:30 it was a different van.

09:13:31 **A.** All right.

09:13:31 **Q.** So if Richard's van was not there when -- when
09:13:36 Christopher Bivens drove by, and he had an alibi, I mean
09:13:41 Richard did, that was part of -- that would obviously help
09:13:44 your client would it not?

09:13:46 **A.** Yes, it would.

09:13:47 **Q.** So you and Judge -- now Judge Walsh, but at the time
09:13:51 Attorney Walsh, you and Judge Walsh then were -- were

09:13:55 essentially to an extent sharing defenses and sharing
09:13:58 documents in this case, would that be accurate?

09:14:00 **A.** We were certainly sharing information.

09:14:02 **Q.** You were sharing information. On December eighth of
09:14:07 ninety-four -- if I can just have that transcript, Judge,
09:14:19 on December eighth you said that you were -- that
09:14:23 information and documentation was being shared between you
09:14:26 and Mr. Walsh, is that accurate?

09:14:29 **A.** I think -- yes, that would be somewhat accurate.

09:14:33 **Q.** Okay, so and that was in specific relation to Roy
09:14:40 Lortie's report, is that accurate?

09:14:42 **A.** Yes.

09:14:43 **Q.** Okay. Now, have you -- prior to the summer of 2014,
09:14:50 had you ever seen Roy Lortie's report?

09:14:52 **A.** Not that I recall.

09:14:53 **Q.** Not that you recall. Now, showing you what's been
09:15:02 marked and received as Defendant's Exhibit 5, I'll take the
09:15:05 trial -- I'll take those back.

09:15:12 **A.** Yes, sure.

09:15:14 **Q.** How many pages is that document?

09:15:17 **A.** I'm just counting it now. Ten. Ten pages.

09:15:39 **Q.** Okay, and if you could turn to page seven of that
09:15:43 document for me.

09:15:46 **A.** All right.

09:15:47 **Q.** And on page seven of that document, does it not

09:15:50 reflect a report done by Deputy Richard Curtis about what
09:15:55 time he was at the D&W?

09:15:58 **A.** It appears to be, yes.

09:16:07 **Q.** Okay, and now return to page eight on that document.
09:16:14 At the bottom of page eight, is there a notation about the
09:16:18 height and weight and some other descriptors of Heidi
09:16:22 Allen?

09:16:23 **A.** There appears to be, yes.

09:16:24 **Q.** Now, prior to coming here and prior to giving your
09:16:32 affidavits, had you taken any steps to look through the
09:16:37 file that you had in this case --

09:16:40 **A.** No.

09:16:41 **Q.** -- since the trial?

09:16:41 **A.** I don't have the file so the answer is no.

09:16:43 **Q.** So you've never gone through on your own to
09:16:46 determine whether any of these documents that we're
09:16:49 discussing here today are actually in the file, is that
09:16:51 accurate?

09:16:52 **A.** Yes, that's accurate.

09:16:54 **Q.** We're solely here -- you're solely here based on
09:16:56 your own memory, is that accurate?

09:16:58 **A.** Yes.

09:17:00 **Q.** Now, with regard to Deputy Curtis, one of the issues
09:17:22 at the trial was what time Deputy Curtis arrived at the
09:17:26 D&W, do you remember that?

09:17:27 **A.** No.

09:17:44 **Q.** Judge, can you see this screen from where you are?

09:17:47 **A.** Well, I can see the screen, I'm not sure --

09:17:49 **Q.** Well, yeah. One thing at a time.

09:17:52 **A.** Whether my eyesight is good enough to read off it
09:17:56 may be another matter.

09:17:58 **Q.** If it's not, just let me know. Can you see that?

09:18:02 **A.** Yes.

09:18:02 **Q.** All right, turning now, this is the page fourteen
09:18:07 thirty-nine of the trial transcript. It refers to
09:18:10 something that was marked but not received as Defendant's
09:18:13 Exhibit M, and this is in your cross-examination as you can
09:18:16 see, and I'll just scroll it down, of Deputy Curtis. And
09:18:22 you referred here to Exhibit L which you call a ten-page
09:18:27 document, is that accurate?

09:18:28 **A.** Yes, I do.

09:18:29 **Q.** And you ask him to look at page seven. Do you see
09:18:32 that down here on line twenty -- yes, twenty-two through
09:18:38 twenty-four?

A. Yes.

09:18:40 **Q.** And he takes it, and on the next page you question
09:18:43 him about what time he arrived at the D&W, and on page --
09:18:51 on lines nine through fourteen you point out that it says
09:18:55 in the report which is Exhibit M that he arrived at 7:55,
09:19:00 is that accurate?

09:19:00 **A.** It appears to be 7:40. Oh, I'm sorry, yes, it does.

09:19:04 **Q.** Two lines below. The report says 7:55, is that
09:19:09 accurate, according to your questioning?

09:19:10 **A.** Yes.

09:19:11 **Q.** Now if you could turn to the minutes that you have
09:19:13 in front of you, Exhibit 5, what time does it say on that,
09:19:15 on Exhibit 5, that he showed up at the D&W?

09:19:28 **A.** 7:55.

09:20:11 **Q.** Okay, now later on in the cross-examination, moving
09:20:16 now to page fourteen fifty-five of the trial transcript,
09:20:22 you refer back to Exhibit M with Deputy Curtis, and the
09:20:27 bottom of page eight, again, or excuse me, the bottom of
09:20:30 page eight and there -- well, actually on lines --

09:20:35 THE COURT: Not page eight.

09:20:37 MR. MOODY: Page eight of the exhibit, I'm
09:20:39 sorry.

09:20:39 **Q.** Page eight of Exhibit M on lines -- on page fourteen
09:20:43 fifty-five on lines twelve through twenty-five, you're
09:20:49 asking Deputy Curtis about Heidi's height and weight, and I
09:20:57 can bring you the trial transcript if you rather.

09:21:01 **A.** No, I can see it from here. Yes, that's correct.

09:21:04 **Q.** Okay, and then at the bottom of that on line
09:21:07 twenty-three you ask him to look at Exhibit M at the bottom
09:21:11 of page eight.

09:21:15 **A.** All right.

09:21:16 **Q.** And then flipping the page over on lines -- excuse me, page fourteen fifty-six of the trial transcript, lines two through six, you ask him if that refreshes his recollection as to Heidi Allen's height and weight, and he says five-eleven, one forty-five. Is that accurate on the trial transcript?
09:21:20
09:21:24
09:21:29
09:21:31
09:21:34

09:21:35 **A.** Yes, it is.

09:21:36 **Q.** On Exhibit 5, if you turn to the bottom of page eight in Exhibit 5 please, is what's listed on the bottom of page eight in Exhibit 5 the height of Heidi Allen and the weight of Heidi Allen, five-eleven and one-forty-five?
09:21:39
09:21:47
09:21:50

09:21:54 **A.** Yes, it is.

09:21:55 **Q.** Now if you could turn to the bottom of page nine and page ten on Exhibit 5 which you have in front of you, is that the Roy Lortie report?
09:21:59
09:22:04

09:22:05 **A.** Yes.

09:22:07 **Q.** So you marked at trial an exhibit that has ten pages that on the bottom of page seven discusses the -- discusses what time Deputy Curtis showed up on the scene, and then at the bottom of page eight discusses the height and weight of Heidi Allen, and on page nine and ten has the Roy Lortie report. Isn't it quite possible that Exhibit M is the same exhibit that you hold in front of you?
09:22:15
09:22:25
09:22:28
09:22:33
09:22:39
09:22:42

09:22:51 **A.** It is.

09:22:52 **Q.** Now, you mention on direct that you had an

09:23:18 investigator, I believe it was both Calvers, Cavals?
09:23:25 **A.** Calvers, C-A-L-V-E-R-S.
09:23:30 **Q.** Were working for you, is that accurate?
09:23:31 **A.** Yes.
09:23:32 **Q.** Now, were they to your knowledge also working for
09:23:37 Judge Walsh?
09:23:38 **A.** Yes.
09:23:38 **Q.** So you were in addition to cooperating with each
09:23:43 other, you were also sharing an investigator, was that
09:23:46 accurate?
09:23:46 **A.** Yes.
09:23:46 **Q.** And you also turned over whatever notes that Judge
09:23:53 Walsh had as part of your Rosario over to the defense, is
09:23:57 that -- do you remember that?
09:23:57 **A.** I don't recall it, no. I'm not -- I'm not -- I'm a
09:24:02 little confused by your question.
09:24:03 **Q.** Well, if you had received notes, Rosario, from
09:24:06 witnesses that you were calling, from the Calvers, you
09:24:10 would have turned -- and Judge Walsh had, you would have
09:24:13 turned Judge Walsh's if you had them over to Don Dodd as
09:24:17 part of the reciprocal Rosario?
09:24:22 **A.** I would have turned over what notes I had at the
09:24:26 time up to Gary's trial.
09:24:28 **Q.** Sure.
09:24:29 **A.** If the Calvers had obtained notes from witnesses

09:24:35 subsequent to Gary's trial, they would have delivered those directly to Judge Walsh and I would not have any role in that.

09:24:43 **Q.** Well, were you to your knowledge in possession of any documents that had been turned over to Judge Walsh by his investigator be it the Calvers or anybody else to your knowledge?

09:24:54 **A.** Not that I recall.

09:24:55 **Q.** Do you remember cross-examining Susan Cowen (ph)?

09:26:00 **A.** Not -- not at present I don't.

09:26:03 **Q.** Well, would it refresh your recollection if I told you that she was one of the people that lived on Kenyon Road who testified at trial that they had seen Richard's van in the vicinity of your client's house on Easter morning of ninety-four?

09:26:17 **A.** I honestly have no present recollection of that.

09:26:22 **Q.** Well, turning to page nineteen thirty-one of the transcript, can you see lines seventeen through twenty-five?

09:26:42 **A.** Yes.

09:26:43 **Q.** And in that you refer to the Calvers as being the investigators for Mr. Walsh do you not?

09:26:53 **A.** I do.

09:26:54 **Q.** Okay, and then flipping over to page nineteen thirty-two, you refer in attempting to cross-examine, or

09:27:05 not attempting, you were cross-examining Ms. Cowen, you
09:27:08 referred to her failure to speak with, and I guess I didn't
09:27:13 go down far enough, on page -- line -- page nineteen
09:27:18 thirty-two on pages -- lines two through eight that she
09:27:23 was -- that investigators for Judge Walsh were trying to
09:27:27 interview her.

09:27:27 **A.** That's what it says, yes.

09:27:33 **Q.** So you had knowledge of what Judge Walsh had -- his
09:27:37 investigators, be it the Calvers or somebody else do, and
09:27:40 you had notes for them obviously, would that be accurate?

09:27:42 **A.** Up to the point of Gary's trial, yes.

09:27:59 **Q.** Now, Judge Walsh sat in on the entirety of Gary
09:28:06 Thibodeau's trial with the possible exception of I guess
09:28:09 jury selection, but he sat in on all of the testimony, is
09:28:12 that accurate?

09:28:12 **A.** As I recall, yes.

09:28:13 **Q.** And at various points he was actually sitting at the
09:28:16 defense table was he not?

09:28:17 **A.** Whenever he was there he did, yes.

09:28:21 **Q.** And he brought with him his file did he not?

09:28:23 **A.** I believe he did.

09:28:24 **Q.** So obviously up to the point of Gary's trial,
09:28:32 whatever documents he had in his file, you had access to,
09:28:35 would that be accurate?

09:28:38 **A.** I guess if I knew about them, yes.

09:28:56 **Q.** Fair enough. Let's turn a little bit now to the discovery portion. You were aware -- well, actually let me back up. I'll withdraw that question. You received in December of ninety-four or January of ninety-five, you received five boxes of discovery from the District Attorney's Office, is that accurate?

09:29:26 **A.** Yes.

09:29:26 **Q.** And Judge Walsh also received five boxes of discovery from the District Attorney's Office, is that accurate?

09:29:33 **A.** I assume so.

09:29:34 **Q.** Well, you knew that did you not?

09:29:36 **A.** I -- I assume that he received the same thing I did.

09:29:43 **Q.** Now, in February of 1995 you became aware that -- that Judge Brandt was no longer going to be presiding over the case, is that accurate?

09:30:50 **A.** I knew Judge Brandt was not going to preside over the case. Exactly when I'm not sure.

09:30:55 **Q.** Well, do you remember writing a letter to then Fifth Judicial -- well, I'm not sure exactly what his title was, but to Judge Burke on February second of 1995?

09:31:05 **A.** Do I recall it now?

09:31:07 **Q.** Yes.

09:31:08 **A.** Not off the top of my head.

09:31:13 MR. MOODY: If I could get that marked.

09:31:15 (People's Exhibit LL was marked for
09:31:16 identification).

09:31:47 **Q.** Showing you what's been marked as People's Exhibit
09:31:51 LL, if you could take a look at that and see if you
09:31:53 recognize that.

09:32:38 (Whereupon, there was a pause in the
09:32:41 proceeding.)

09:32:41 **A.** Okay.

09:33:02 **Q.** Is that a letter you wrote to Judge Burke?

09:33:04 **A.** Yes.

09:33:04 **Q.** The majority of the context being?

09:33:08 **A.** Change of judge.

09:33:09 **Q.** The change of Judge Brandt's recusal. If you could
09:33:13 look at I believe it's the last paragraph in there, does it
09:33:17 not say that both you and Judge Walsh have received five
09:33:21 boxes of discovery?

09:33:22 **A.** Yes.

09:33:23 **Q.** And it also indicates that you expect the discovery
09:33:26 to continue.

09:33:27 **A.** Yes.

09:33:27 **Q.** Okay, so you were still receiving documents after
09:33:30 the fifth, excuse me, after the five boxes, is that
09:33:34 accurate?

09:33:34 **A.** Apparently so.

09:33:35 MR. MOODY: Show Exhibit LL to defense

09:33:46 counsel. I move to admit.
09:33:52 MS. PEEBLES: No objection.
09:33:53 THE COURT: LL is moved without objection.
(People's Exhibit LL was received in
09:33:59 evidence).
09:33:59 **Q.** Now, in your direct testimony, I believe you said
09:34:07 that you -- well, let me ask you this. Did you ever come
09:34:11 to the District Attorney's Office to review documents or
09:34:16 videotapes or anything involving the district attorney's
09:34:19 file or the Sheriff's Department's file?
09:34:22 **A.** I don't recall.
09:34:23 **Q.** You don't recall. Well, let me ask you this and --
09:34:28 did you ever meet Investigator Terry Whipple?
09:34:31 **A.** I don't recall that.
09:34:32 **Q.** You don't recall? Let me ask you this. Did you at
09:34:35 some point prior to becoming an attorney ever serve a -- an
09:34:38 internship with the State DOT?
09:34:41 **A.** No.
09:34:41 **Q.** Do you remember having discussion with Investigator
09:34:45 Whipple about Oswego County winters and knowing all about
09:34:51 them?
09:34:52 MS. PEEBLES: Objection. Relevance.
09:34:53 THE COURT: Why is this relevant?
09:34:54 MR. MOODY: Judge, Investigator Whipple, one
09:34:56 of the reasons Investigator Whipple remembers Judge

09:34:59 Fahey coming to -- to review documents is that they had
09:35:02 a conversation, waiting for DA Dodd to show up, about
09:35:06 Oswego County winters.

09:35:07 THE COURT: The witness said he doesn't
09:35:09 remember having a conversation.

09:35:10 MR. MOODY: Well, I asked him about a
09:35:12 specific -- that's fine, I'll move on, Judge.

09:35:14 **Q.** Now --

09:35:15 **A.** I don't think there would be much surprising about
09:35:18 Oswego County winters.

09:35:19 **Q.** Well, probably somewhat accurate as well. In the --
09:35:26 in the documents that you received, you received things
09:35:30 called lead sheets, is that accurate?

09:35:32 **A.** Yes.

09:35:33 **Q.** Now, on your direct I believe you testified that
09:35:40 Exhibit 17, which I believe is admitted, is that a lead
09:35:44 sheet or is that a lead log?

09:35:47 **A.** It appears to be lead sheet number twenty-nine.

09:35:50 **Q.** Okay, well, you had seen lead sheets in this case
09:35:53 before, is that accurate?

09:35:55 **A.** Yes.

09:35:55 **Q.** Okay, and --

09:36:11 (People's Exhibit MM was marked for
09:36:13 identification).

09:36:37 **Q.** Showing you what's been marked as MM, I'm going to

09:36:40 ask you if you recognize ever seeing a document that looks like that.

09:36:48 **A.** As to format, yes.

09:36:58 **Q.** Okay, have you ever -- and at the top of this, to refresh your recollection, it says "lead sheet" does it not?

09:37:07 **A.** Yes.

09:37:07 **Q.** And there's a specific number on that is there not?

09:37:10 **A.** Yes.

09:37:10 **Q.** Now I'm going to ask you if you remember ever seeing that specific lead sheet before or a copy thereof.

09:37:25 **A.** I don't recall ever seeing it.

09:37:28 MS. PEEBLES: Mark, can I see that?

09:37:30 MR. MOODY: Sure. (Handing).

(Whereupon, there was a pause in the proceeding).

09:39:16 (People's Exhibit NN was marked for identification).

09:39:19 **Q.** Showing you what's been marked as Exhibit NN, I'm going to ask you if you recognize that.

09:39:25 **A.** It appears to be a copy of my Omnibus motion.

09:39:29 **Q.** Are you sure about that? I'll show you because your Omnibus motion is already admitted as Defendant's Exhibit 3.

09:39:38 **A.** This says, "notice of motion." It appears to have

09:39:41 Omnibus relief.

09:39:43 **Q.** I'll show you Defendant's Exhibit 3. This is the --

09:39:46 **A.** I'm sorry.

09:39:47 **Q.** This is a May first dated motion approximately two
09:39:52 and a half, three weeks before the trial.

09:39:56 **A.** All right.

09:39:56 **Q.** Do you recognize that document then?

09:39:59 THE COURT: Which document are you asking
09:40:00 about?

09:40:01 MR. MOODY: I'm sorry, NN.

09:40:02 THE COURT: He's asking about NN.

09:40:05 **Q.** NN, yes.

09:40:08 **A.** It appears to be a motion that I prepared. I
09:40:17 haven't seen it in twenty years, so if I can take a look at
09:40:21 it.

09:40:21 **Q.** I understand, take time to read it.

09:40:46 (Whereupon, there was a pause in the
09:40:52 proceeding.)

09:40:52 **A.** Okay.

09:40:52 **Q.** And it -- is that a motion that you filed?

09:40:56 **A.** Yes.

09:40:56 **Q.** Okay, have it back.

09:40:59 **A.** Sure.

09:41:00 MR. MOODY: Showing Exhibit NN to defense
09:41:05 counsel, Judge, I'd move to admit.

09:41:07 MS. PEEBLES: No objection.

09:41:08 THE COURT: NN is in without objection.

(People's Exhibit NN was received in
09:41:15 evidence).

09:41:15 **Q.** Now there are a number of exhibits on Exhibit NN,
09:41:19 the motion that you filed. If you could turn to Exhibit L
09:41:23 as in Larry.

09:41:49 **A.** All right.

09:41:49 **Q.** Exhibit -- do you recognize Exhibit L?

09:41:51 **A.** L is attached to the motion, and that's the same
09:41:55 exhibit that you showed me marked MM.

09:41:57 MR. MOODY: Okay, at this point in time,
09:41:59 Judge, I would move to admit Exhibit MM.

09:42:04 MS. PEEBLES: No objection.

09:42:09 THE COURT: MM is in without objection.

(People's Exhibit MM was received in
evidence).

09:42:15 **Q.** So showing you now Exhibit 17, Judge, there are a
09:42:18 number of lead numbers listed on that, on that exhibit are
09:42:21 there not? I believe it runs about nine-twenty-one to
09:42:24 nine-forty something?

09:42:24 **A.** Nine-sixty-seven to appears to be nine -- maybe
09:42:29 two-hundred.

09:42:30 **Q.** Okay. Is it two-hundred or --

09:42:34 **A.** Well, it's blacked out at the bottom.

09:42:36 **Q.** I think it's ripped but --

09:42:38 **A.** Okay.

09:42:38 **Q.** To at least nine-- to nine-ninety-six.

09:42:41 **A.** Okay.

09:42:41 **Q.** Okay? So in the course of being a criminal defense 09:42:48 attorney and a judge, have you ever seen something called a 09:42:51 lead log?

09:42:51 **A.** Ever seen something called what?

09:42:53 **Q.** A lead log, L-O-G, or heard of it.

09:42:57 **A.** I'm really not familiar with the term. I'm familiar 09:43:00 with lead sheets.

09:43:00 **Q.** Okay. Well, it would make sense to have some kind 09:43:03 of index or table of contents to all of the leads and have 09:43:07 a brief description of what the lead was about.

09:43:11 MS. PEEBLES: Objection.

09:43:12 THE COURT: Sustained.

09:43:14 **Q.** Now you mention in Exhibit 17 that with reference to 09:43:22 nine-seventy-seven there was something about the New Haven 09:43:25 Post Office.

09:43:26 **A.** Yes.

09:43:26 **Q.** And is there -- with regard to Exhibit 7, is there 09:43:48 an officer or a deputy assigned to that lead?

09:43:51 **A.** It doesn't appear to be.

09:43:53 **Q.** Doesn't appear to be.

09:43:54 (People's Exhibit OO was marked for

09:44:45 identification).

09:44:46 **Q.** Showing you Exhibit OO, and ask you if you can take a look at that, see if you recollect seeing anything like that or seeing that document.

09:44:57 **A.** I don't recall seeing it.

09:45:09 **Q.** Is that a -- does that document have a lead, or excuse me, what is that document entitled to your knowledge?

09:45:16 MS. PEEBLES: I'm going to object, Judge. I'd also like to see what he's handing the witness.

09:45:20 THE COURT: Why don't you let Ms. Peebles see it first.

(Whereupon, there was a pause in the proceeding).

09:45:49 THE COURT: Are you withdrawing your objection?

09:45:50 MS. PEEBLES: I'll withdraw my objection.

09:45:52 THE COURT: Thank you.

09:45:53 **Q.** Is there a lead number on that?

09:46:00 **A.** Nine-seventy-seven.

09:46:01 **Q.** And that is a -- what's the document itself entitled? It's a lead sheet is it not?

09:46:08 **A.** It's a lead sheet, yes.

09:46:10 **Q.** And what is the apparent overall information on -- in lead sheet nine-seventy-seven?

09:46:17 **A.** On the face of it it says New Haven Post Office,
09:46:21 Heidi case, a call received by someone, a date and a time.

09:46:28 **Q.** And relating -- the New Haven Post Office is the
09:46:31 same thing that you had -- that was referenced in nine-
09:46:34 seventy-seven on exhibit seven -- is that seventeen?

09:46:37 **A.** Yes, yes.

09:46:39 **Q.** Now, you testified on direct that one of the things
09:47:07 about the -- Heidi being a confidential informant was that
09:47:15 you believed that it would provide you with other potential
09:47:20 or another explanation for her disappearance, is that
09:47:23 accurate?

09:47:24 **A.** Yes.

09:47:24 **Q.** In the trial, you used the fact that there was no
09:47:36 testimony or evidence of Heidi either using drugs or being
09:47:40 involved in any way with drugs as part of your defense
09:47:45 because both Baldasaro and Mac Donald had said that the
09:47:52 motivation for it was a potentially a drug deal, is that
09:47:55 accurate?

09:47:56 **A.** Yep.

09:47:56 **Q.** And you attempted on your closing did you not to
09:48:00 show that that could -- that motivation subscribed by
09:48:06 Baldasaro and Mac Donald could not be accurate because
09:48:09 there was no --

09:48:10 **A.** Connection.

09:48:11 **Q.** Connection, or excuse me, there was no use or

09:48:15 evidence of Heidi using drugs, is that accurate?

09:48:18 **A.** I would have to look at my closing, but I wouldn't
09:48:22 disagree with your characterization.

09:48:24 **Q.** Well, do you want to look at your closing?

09:48:26 **A.** Sure.

09:49:32 **Q.** This is page three-thousand three-hundred and
09:49:42 thirteen from -- and it is -- just so you can see, it's
09:49:46 your summation, and in lines -- line sixteen through
09:49:50 twenty-two, you talk there about the fact that there were
09:49:58 in Heidi's past, according to Brett Law, there was no drug
09:50:02 use, no drug deals, nothing sinister or suspicious.

09:50:05 **A.** Yes.

09:50:06 **Q.** About the relationship she had between the defendant
09:50:12 and either Brett Law or her, is that accurate?

09:50:15 **A.** Yes.

09:50:16 **Q.** Okay, then turning to page three-thousand three-
09:50:33 hundred and thirty and thirty-one, again of your summation,
09:50:41 in lines nineteen through twenty-five on page
09:50:44 three-thousand three-hundred and thirty and -- excuse me, I
09:50:50 apologize, I -- it's page three-thousand three-hundred and
09:50:54 thirty-one, lines seventeen through the bottom of page
09:51:00 nine-twenty-five, and then over on three-thousand
09:51:02 three-hundred and thirty-two, lines two through eight. If
09:51:07 you -- I'll just have you, rather than flipping over --
09:51:18 (handing).

09:51:28 (Whereupon, there was a pause in the proceeding.)

09:51:51 **A.** Okay.

09:51:52 **Q.** And so and in that -- on that section of your closing, you talked about the fact that because Gary was in jail in Massachusetts for a drug charge, that Baldasaro and Mac Donald essentially linked those two together on their own, is that accurate?

09:52:12 **A.** Yes.

09:52:12 **Q.** So you used the fact that Heidi didn't have a connection to drugs as part of your defense at the trial, is that accurate?

09:52:22 **A.** Yes.

09:52:22 **Q.** If Heidi was a CI, wouldn't that also then lend credibility to Baldasaro and Mac Donald's testimony that it was over a drug deal?

09:52:34 **A.** No. If she was a CI, she wouldn't have been dealing drugs.

09:52:47 **Q.** But the testimony wasn't that she was dealing drugs, the testimony was that she had, quote, "screwed them in a drug deal," was it not?

09:53:00 **A.** The implication is that she was dealing drugs and screwed them in the drug deal. That certainly would be the implication I would take from that.

09:53:08 **Q.** Now, originally in the summer of 2014, you provided

09:53:16 an affidavit to the defense that -- as part of their
09:53:28 motion, is that accurate?

09:53:29 **A.** Yes.

09:53:29 **Q.** Okay, and in that affidavit which has been received
09:53:38 as People's Exhibit D, or not received but has been marked
09:53:44 as People's Exhibit D, you mention nine either people or
09:53:48 items that you stated you had never heard of, is that
09:53:53 accurate?

09:53:53 **A.** Yes.

09:53:54 **Q.** And they are the three CI reports about -- from
09:54:00 three reports, excuse me, about Heidi being a CI, from --
09:54:03 one from VanPatten, one from Anderson, and one from
09:54:07 Montgomery. The report of May seventeen, or excuse me, the
09:54:12 report from Investigator Kleist about her card, the Roy
09:54:19 Lortie report of April twenty-seventh of ninety-four, the
09:54:25 name Roger Breckenridge, Jennifer Wescott, Michael Bohrer
09:54:30 and -- and Dan Barney, is that accurate?

09:54:33 **A.** Yes.

09:54:34 **Q.** Now in the course of this motion, you had become
09:54:43 aware have you not that Roger Breckenridge was actually on
09:54:46 your witness list, is that accurate?

09:54:48 **A.** Yes.

09:54:49 **Q.** And also his wife, Tracey Breckenridge, was also on
09:54:53 your witness list, is that accurate?

09:54:55 **A.** Yes.

09:54:55 **Q.** Now, you gave a supplemental affidavit then did you
09:55:01 not after that?

09:55:02 **A.** Yes.

09:55:03 **Q.** And in that affidavit you said that you had become
09:55:15 aware of Roger Breckenridge's name because of a report
09:55:20 involving with -- excuse me, a report about a Leland
09:55:26 Neadle, is that accurate?

09:55:27 **A.** Yes.

09:55:28 **Q.** And you said in that affidavit that the report also
09:55:33 dealt with a David Maynes and that the reason you had put
09:55:39 Roger Breckenridge's name on the witness list was in order
09:55:43 to make sure that everyone who was listed in the reports
09:55:47 would be on the witness list in case their testimony became
09:55:54 relevant or their information became relevant, is that
09:55:55 accurate?

09:55:56 **A.** Well, I don't think I said everyone, but certainly
09:55:59 I -- because of the van issue, I think I included Roger
09:56:04 Breckenridge in case the van became an issue.

09:56:06 **Q.** Well, I want to show you People's Exhibit E which is
09:56:12 a copy of your supplemental affidavit and direct your
09:56:16 attention to paragraph three, the first line of paragraph
09:56:20 three. Does it not say that I listed every name in the
09:56:24 reports in case their testimony became relevant?

09:56:28 MS. PEEBLES: Objection. Argumentative,
09:56:29 Judge.

09:56:30 THE COURT: No, I'll allow it.

09:56:31 **A.** Well, because the van was relevant, I listed people in the reports. I didn't list every person ever provided to me on a lead sheet.

09:56:43 **Q.** But doesn't the affidavit say exactly that?

09:56:47 MS. PEEBLES: Again, Judge, it's argumentative.

09:56:49 THE COURT: That's argumentative. I'll sustain.

09:56:51 **Q.** Could you then explain to me then where in paragraph three of that, of your supplemental affidavit, it mentions that -- the importance of the van?

09:57:38 (Whereupon, there was a pause in the proceeding.)

09:57:40 **A.** The only information I had about Roger Breckenridge was in connection with the lead sheet and the van. That was the only reason Roger Breckenridge or Tracey Breckenridge was listed.

09:57:57 **Q.** I'm just asking you, Judge, where in paragraph three of your supplemental affidavit it says anything about the van and that was the reason that it was important.

09:58:05 MS. PEEBLES: Objection.

09:58:06 THE COURT: The question wasn't answered. I'll allow the question.

09:58:16 **A.** Implicit in the information about Leland Neadle and

09:58:26 David Maynes is a lead sheet in connection with the van.

09:58:40 **Q.** So I would assume then that you would have put Leland Neadle on your witness list, is that accurate?

09:58:46 **A.** I didn't put Leland Neadle on my witness list.

09:58:48 **Q.** Did you put David Maynes on the witness list?

09:58:52 **A.** I don't recall. I don't know that I did.

09:58:55 **Q.** Showing you Exhibit KK, does that refresh your recollection as to whether or not David Maynes was on the witness list?

09:59:57 **A.** David Maynes is not on the witness list.

09:59:59 **Q.** Okay, David Maynes is mentioned in the same report as Roger Breckenridge about the van.

10:00:07 MS. PEEBLES: Objection. Relevance, Judge.

10:00:09 THE COURT: Mr. Moody, where are you going with this?

10:00:11 MR. MOODY: Well, Judge, he has testified that the importance that -- of Roger Breckenridge I mean obviously on his witness list was about the van. If he -- if Roger Breckenridge's importance about the van, why wouldn't he also put David Maynes on there when they were mentioned in the same report as to doing the same thing to the van.

10:00:28 THE COURT: I'll allow it.

10:00:30 MS. PEEBLES: I would just object. Has nothing to do with the Brady violation.

10:00:34 THE COURT: I'll allow it.

10:00:35 MR. MOODY: It may have something to do with
10:00:37 the new evidence violations, or evidence issues.

10:00:40 **A.** Can you show me the lead sheet?

10:00:44 **Q.** Sure.

10:00:59 MS. PEEBLES: Judge, again I'll object because
10:01:01 if he's talking about newly discovered evidence, they
10:01:04 have already waived the due diligence argument and I
10:01:06 think that's the path that Mr. Moody is heading down,
10:01:08 and since they've waived that, I don't see the
10:01:10 relevance, and it's beyond the scope of my direct
10:01:13 examination.

10:01:13 THE COURT: I'm going to allow it.

10:01:15 **Q.** Showing you what's been marked as People's Exhibit
10:01:22 F, pull it out of there.

10:01:25 **A.** Thanks.

10:01:27 (Whereupon, there was a pause in the
10:02:15 proceeding.)

10:02:15 **A.** Now would you -- can I have the question read back
10:02:17 please?

10:02:18 **Q.** Sure, or I can rephrase.

10:02:40 (Whereupon, the court reporter read back the
10:02:41 last question).

10:02:43 **A.** David Maynes and Leland, Lee Neadles, are not listed
10:02:48 on the witness list because the person they identified as

10:02:53 removing a van from the Thibodeau property was Roger
10:02:56 Breckenridge, not either one of them.

10:02:58 **Q.** Just Roger Breckenridge?

10:03:08 **A.** Someone named Dick Murtaugh.

10:03:11 **Q.** Is Dick Murtaugh in your --

10:03:13 **A.** No.

10:03:13 **Q.** So why isn't Dick Murtaugh or David Maynes -- well,
10:03:20 why isn't Dick Murtaugh on your witness list?

10:03:24 MS. PEEBLES: Objection.

10:03:24 THE COURT: Where are you going, Mr. Moody?

10:03:26 MR. MOODY: Well, Judge --

10:03:26 **A.** Because if --

10:03:27 THE COURT: Hold on just a second, Judge. He
10:03:31 established he's not on the witness list. He
10:03:32 established the what, the judge answered by names, and
10:03:35 Leland Neadle? Is that --

10:03:37 MR. MOODY: Leland Neadle, yes.

10:03:37 THE COURT: Is not on the list. Where are we
10:03:39 going?

10:03:39 MR. MOODY: Well, Judge, the Judge's
10:03:40 explanation for putting Roger Breckenridge on the
10:03:43 witness list is that he hauled the van away. The
10:03:47 witness lists -- the exhibit as he mentioned says that
10:03:51 Dick Murtaugh also hauled the van away, so I'm just
10:03:54 wondering why he would put Roger Breckenridge on there

10:03:57 and not put Dick Murtaugh.

10:04:00 THE COURT: Well, how is that relevant?

10:04:01 MR. MOODY: Well, I believe, Judge, because --
10:04:03 I'll link it up in a few minutes, but I think there is
10:04:05 an alternative explanation as to why Roger Breckenridge
10:04:08 is on his witness list and --

10:04:09 THE COURT: You say a few minutes. You mean a
10:04:12 couple questions?

10:04:12 MR. MOODY: A couple questions.

10:04:13 THE COURT: I'll allow it if you do it
10:04:15 quickly.

10:04:16 **A.** Because the van was an issue, I only needed one of
10:04:19 the participants who was responsible for its removal, and I
10:04:23 picked Roger Breckenridge.

10:04:25 **Q.** Now, his wife is also on the witness list, is that
10:04:29 right?

10:04:29 **A.** Yes.

10:04:29 **Q.** Now your client in 1994 lived on Kenyon Road.

10:04:34 **A.** Yes.

10:04:35 **Q.** And one of the large issues in the case is whether
10:04:40 or not Richard Thibodeau's van had been seen on Easter
10:04:47 morning of ninety-four on Kenyon Road in the vicinity of
10:04:52 your client's house, is that accurate?

10:04:53 **A.** Yes.

10:04:54 **Q.** And in fact, there were I believe, if my memory

10:04:58 serves, five different people who testified for the prosecution that they had seen Richard's van in the vicinity of your client's house on Easter morning.

10:05:08 MS. PEEBLES: Objection. Objection, Judge, the number of five people.

10:05:13 THE COURT: Can you cite the people?

10:05:18 MR. MOODY: Well, there was the three --

10:05:19 MS. PEEBLES: I think he can ask each question and each witness one by one and that would be a proper question.

10:05:25 THE COURT: I'll sustain it.

10:05:26 **Q.** There -- there was Susan Cowen who testified to seeing the van in the area of your client's house, is that accurate?

10:05:34 **A.** It could be, I don't know, I don't recall presently.

10:05:37 **Q.** Well, let me -- let me cut to the chase. Do you remember who the Bartletts were?

10:05:43 **A.** Not off the top of my head.

10:05:45 **Q.** If I were to tell you or show you their testimony that they lived next door to your client and that you called them to testify that they didn't hear the van come into their -- into your client's house in the morning of April -- Easter morning in ninety-four, does that refresh your recollection?

10:06:05 **A.** If that's what the transcript says, then yes, that's

10:06:09 what occurred at trial.

10:06:10 **Q.** So of great interest to both sides were the people who lived on Kenyon Road, is that accurate?

10:06:17 **A.** It would appear to be.

10:06:18 **Q.** So if Roger and Tracey Breckenridge lived on Kenyon Road less than a mile from your client's house on Easter of 1994, that might be the reason they were on the witness list?

10:06:31 MS. PEEBLES: Objection, Judge.

10:06:32 **A.** That was not the reason they were on the witness list.

10:06:34 THE COURT: Overruled. He answered the question.

10:06:37 **Q.** Then why was Tracey Breckenridge on the witness list?

10:06:40 MS. PEEBLES: Asked and answered.

10:06:41 **A.** I presently don't recall.

10:06:43 THE COURT: No, it was not answered, so I'm going to overrule your objection.

10:06:46 **Q.** Is she mentioned in lead thirteen forty-three from Leland Neadle?

10:06:52 **A.** Yes, she is.

10:07:32 **Q.** Whereabouts?

10:07:34 **A.** The bottom of page two of the lead sheet, second paragraph from the bottom.

10:07:40 **Q.** Okay, is that in relation to the van?

10:07:46 **A.** No.

10:07:46 **Q.** What is it in relation to?

10:07:48 **A.** That she knows Gary.

10:07:50 **Q.** And that she used to party with him?

10:07:52 **A.** That's what the lead sheet reflects, yes.

10:07:55 **Q.** So nothing about the van?

10:07:56 **A.** No.

10:07:57 **Q.** So to your knowledge, based on thirteen forty-three,
10:08:03 the Leland Neadle lead, she had no knowledge about the van.

10:08:07 MS. PEEBLES: Objection.

10:08:07 THE COURT: Sustained. Mr. Moody, where are
10:08:20 we with -- in cross, a couple minutes or take a break?

10:08:24 MR. MOODY: Probably should take a break.

10:08:25 THE COURT: Court's in recess for ten minutes.
10:08:28 Give the witness some time. We'll reconvene at twenty
10:08:32 after.

10:08:32 (Whereupon, there was a recess.)

10:17:59 THE COURT: Mr. Moody. We now have a
10:18:03 stenographer.

10:18:05 **Q.** Now, in the course of filling out the affidavit that
10:18:12 you did initially for the defense, you indicated
10:18:25 that you -- that without hesitation, that you had never
10:18:32 seen any of the five reports that are listed in that
10:18:34 affidavit, is that accurate?

10:18:35 **A.** In the first one, yes.

10:18:37 **Q.** But it turns out that -- that there is a very real possibility that you had in fact seen the Roy Lortie report, is that accurate?

10:18:45 **A.** Apparently so.

10:18:46 **Q.** So now you also mentioned in that, that besides Roger Breckenridge, that you had never heard the name Dan Barney, is that accurate, in the supplemental affidavit, or excuse me, in the initial affidavit.

10:18:59 **A.** As best I recall, yes.

10:19:00 **Q.** Now, you said in there that you had reviewed every report and every sheet of paper that had been turned over to you, is that accurate, in that affidavit, that you had reviewed all of the documents that had been turned over?

10:19:13 **A.** Can you reference what you're referring to because I'm not sure I --

10:19:16 **Q.** Well, you said that -- that in your affidavit, your initial affidavit, that you had reviewed all of the documents that had been turned over.

10:19:29 MS. PEEBLES: Objection.

10:19:29 **Q.** By the defense.

10:19:31 MS. PEEBLES: That's not in the affidavit.

10:19:33 THE COURT: Can you show that language in the affidavit, Mr. Moody, if it's in the affidavit?

10:19:44 **Q.** In this is Exhibit D, People's Exhibit D, in line --

10:19:48 excuse me, paragraph two, you say that you reviewed all of
10:19:53 the documents and materials that had been turned over by
10:19:56 the District Attorney's Office.

10:19:58 **A.** In 1994 and 1995 you're right.

10:20:01 **Q.** Yes.

10:20:02 **A.** Yes.

10:20:03 **Q.** And now showing you again what's been received as
10:20:08 Exhibit NN, all right, if you could -- if you could turn to
10:20:16 Exhibit J I believe it is in that document.

10:20:25 **A.** All right.

10:20:26 **Q.** If you can review that, does that not contain the
10:20:32 name Dan Barney?

10:20:42 **A.** In addition to a lot of other information, yes.

10:20:54 **Q.** So yes, it contains Dan Barney?

10:20:57 **A.** The name is in there, yes.

10:20:58 **Q.** So when you said in your affidavit that you never
10:21:01 heard of him, that's -- you didn't remember hearing of him,
10:21:06 but apparently you had because you reviewed that document?

10:21:09 **A.** It had no significance to me.

10:21:11 **Q.** Didn't ask you if it had any significance, you had
10:21:14 heard the name Dan Barney and read the name Dan Barney.

10:21:17 **A.** The name Dan Barney is contained in a lead sheet.

10:21:21 **Q.** Well, it's also attached to a motion that you filed.

10:21:24 **A.** Yes.

10:21:24 **Q.** My point is that you had heard the name Dan Barney, 10:21:27 you had read the name Dan Barney.

10:21:29 **A.** Apparently I read that Dan Barney, yes.

10:21:33 **Q.** And so in 2014 when you filed an affidavit, you
10:21:37 didn't remember.

10:21:39 **A.** I didn't.

10:21:40 **Q.** Dan Barney.

10:21:41 **A.** I didn't recall something that had no significance.

10:21:44 **Q.** Well, did you take any steps to -- to examine the
10:21:47 file to see whether or not your affidavit, when you said
10:21:51 you never heard of Dan Barney, whether it was accurate
10:21:54 because now it had significance.

10:21:56 MS. PEEBLES: Objection.

10:21:56 **A.** I don't understand your question.

10:21:58 THE COURT: Hold on, Judge.

10:22:00 **Q.** Well, you said that --

10:22:01 THE COURT: Hold on. What's your objection?

10:22:04 MS. PEEBLES: Relevance.

10:22:04 THE COURT: Yeah. Where are we going, Mr.
Moody?

MR. MOODY: Well, Judge --

10:22:07 THE COURT: It seems very clear being the
10:22:09 trier or decider of fact here the witness forgot.

10:22:14 **Q.** You also mentioned the name that you had never
10:22:27 heard, the name Michael Bohrer, is that accurate?

10:22:30 **A.** Correct.

10:22:31 **Q.** In reviewing anything in these materials, has the name Michael Bohrer come up to you at all prior to getting ready for this hearing?

10:22:41 **A.** Prior to getting ready for the hearing?

10:22:43 **Q.** Yes.

10:22:43 **A.** No.

10:22:44 **Q.** Now you had did you not copies of Herb Yerdon's reports as part of the discovery did you not?

10:22:55 **A.** I may have. I have no present recollection of it.

10:25:11 (People's Exhibit PP-1 was marked for identification).

(People's Exhibit PP-2 was marked for identification).

(People's Exhibit PP-3 was marked for identification).

10:25:46 **Q.** Judge, I want to show you three stacks of documents that have been marked as PP-1, PP-2 and PP-3. You can pull them out of the folders, the bags that they're in if you need to review them, but I ask if you recognize ever receiving those documents.

10:26:08 **A.** I may have. I don't honestly recall presently.

10:26:11 **Q.** Well, these -- so if -- you had no recollection then of whether or not those -- any of those documents refer to Michael Bohrer and an interview with Michael Bohrer.

10:26:29 **A.** Not without seeing the particular lead sheet.

10:26:32 **Q.** Now, you mentioned that you had clearly seen prior to trial exhibit, or excuse me, lead sheet thirteen forty-three which is the Leland Neadle lead sheet.

10:26:52 **A.** Yes.

10:26:53 **Q.** And you're aware that the leads were numbered.

10:26:57 **A.** Apparently they were.

10:26:58 **Q.** So would it be fair to say that you had all the lead sheets then prior to thirteen forty-three?

10:27:05 **A.** I don't know.

10:27:06 **Q.** Did you ever take any steps to put them in order to see if you had them prior to trial?

10:27:11 **A.** You mean did I ever run one-thousand three-hundred and forty-three lead sheets numerically?

10:27:17 **Q.** Just to put them in order, in some kind of order to make sure that you had them?

10:27:21 **A.** Would have put them in some kind of an order but not that order.

10:27:24 **Q.** Not sequentially?

10:27:25 **A.** Right.

10:27:28 THE COURT: Mr. Moody, where are you going with this?

10:27:30 MR. MOODY: Well, Judge, there are a number of leads that refer to Michael Bohrer.

10:27:34 THE COURT: Okay.

10:27:35 MR. MOODY: And if he doesn't -- I mean I

10:27:37 guess part of my point is that in his affidavit he says
10:27:39 that he never saw a number of documents which are the
10:27:42 Brady issue here. He's never reviewed the file so his
10:27:45 memory is -- is rather important to what he did or
10:27:48 didn't remember.

10:27:49 MS. PEEBLES: There is no Brady issue
10:27:51 concerning Michael Bohrer.

10:27:52 THE COURT: Right.

10:27:53 MR. MOODY: But there is a Brady issue
10:27:55 concerning the CI. He says he never saw the CI
10:27:58 reports.

10:27:58 THE COURT: Correct.

10:27:59 MR. MOODY: Of the nine --

10:28:00 THE COURT: So -- so you have -- so far you
10:28:03 have not mentioned the CI report.

10:28:04 MR. MOODY: We're going to get to them.

10:28:07 THE COURT: Can you get to them quickly?

10:28:08 MR. MOODY: My point being that of the nine
10:28:10 things that he says he saw or had never seen in his
10:28:13 initial affidavit, at least four of them he quite
10:28:15 clearly should have seen or had seen but he has no
10:28:18 recollection of them.

10:28:18 MS. PEEBLES: Objection to that
10:28:19 characterization.

10:28:20 THE COURT: I will sustain that. Get to the

10:28:23 CI issue would you please because I can't -- I can't
10:28:28 imagine your -- that it would have been his -- the
10:28:31 witness's responsibility to go speak to Mr. Bohrer. He
10:28:35 wouldn't have done the investigation, correct?

10:28:37 MR. MOODY: No, no, but he said he never heard
10:28:39 of him in his affidavit.

10:28:41 THE COURT: It's a twenty-year situation. I
10:28:43 forget what day of the week it is half of the time.
10:28:45 Move on to the CI issue please.

10:28:53 **Q.** With regard to the three reports that have been
10:29:11 admitted as Exhibits 8, 9, and 10, those are all dated in
10:29:22 December of -- excuse me, December eighth or ninth of
10:29:26 ninety-four, is that accurate?

10:29:30 **A.** Yes.

10:29:30 **Q.** And that would be either the day of or the day after
10:29:35 the court appearance where all of that information --
10:29:38 excuse me, where Roy Lortie's report and -- and the status
10:29:44 of Heidi Allen as to whether or not she was a confidential
10:29:47 informant was discussed, is that accurate?

10:29:50 **A.** Yes.

10:29:50 **Q.** And in -- and that is also before you received the
10:29:57 five boxes of discovery, is that correct?

10:29:59 **A.** Yes.

10:29:59 **Q.** And it would also then be before you -- excuse me,
10:30:03 to your knowledge, Judge Walsh received the five boxes of

10:30:06 discovery.

10:30:07 **A.** Yes.

10:30:08 **Q.** Now, in the course of going up, excuse me, in the course of the discovery, it's your recollection that you never went to view documents or items in the District Attorney's Office or the Sheriff's Department, is that accurate?

10:30:26 **A.** I don't recall doing it.

10:30:27 **Q.** Okay, if I were to show you a memo from Investigator Whipple, or excuse me, from DA Dodd to Investigator Whipple and then Investigator Whipple's notes of you coming up on March twenty-first of 1995 to view among other things a tape of an interview with Robert Baldasaro, would that refresh your recollection?

10:30:52 **A.** I don't believe it would.

10:30:55 **Q.** Did you ever go to the District Attorney's Office or the Sheriff's Department and review Robert Baldasaro's tapes?

10:31:02 **A.** Not that I recall.

10:31:04 **Q.** Now, in the course of the -- the discovery process, you were still getting documents up to and including immediately before trial and during trial, is that accurate?

10:31:24 **A.** I believe that is.

10:31:26 **Q.** Okay, and in fact on May twenty-fifth you received

10:31:49 the Huntley hearing transcripts of several witnesses who
10:31:54 had testified at the Huntley hearing including Mr.
10:31:59 Baldasaro and Mr. Mac Donald, is that accurate?

10:32:01 **A.** I may have.

10:32:02 **Q.** If I were to show you a letter from -- from Mr. Dodd
10:32:05 would that refresh your recollection?

10:32:06 **A.** I'll take a look at the letter.

10:32:34 (People's Exhibit QQ was marked for
10:32:37 identification).

10:32:37 **Q.** (Handing).

10:32:45 (Whereupon, there was a pause in the
10:32:48 proceeding.)

10:32:48 **A.** Okay.

10:32:50 **Q.** And does that refresh your recollection as to
10:32:53 when -- as to whether or not you received those documents
10:32:56 on -- on or about May twenty-fifth?

10:32:58 **A.** I'm assuming it's accurate. I don't really recall
10:33:00 exactly what the date was.

10:33:02 **Q.** So you were still getting documents as the trial --
10:33:07 because the trial started on May eighteenth, or excuse me,
10:33:16 on May twenty-second with jury selection, is that accurate?

10:33:18 **A.** That sounds right.

10:33:19 **Q.** So you were still getting documents and discovery.
10:33:22 You were also getting notes from Mr. Dodd that he -- when
10:33:26 he would have conversations with witnesses getting them

10:33:28 ready for trial during the time that the jury was either
10:33:32 being selected or the trial was going on, is that accurate?

10:33:34 **A.** I don't know. He may have.

10:33:37 (People's Exhibit RR was marked for
10:33:48 identification).

10:34:11 **Q.** Showing you Exhibit RR and ask you if you recognize
10:34:16 that document or documents actually.

10:34:20 (Whereupon, there was a pause in the
10:34:21 proceeding).

10:34:21 **A.** All right.

10:34:26 **Q.** Do you recollect receiving any of those documents on
10:34:29 or about I believe the date on that is June sixth is it
10:34:32 not?

10:34:33 **A.** The date on this is May thirtieth.

10:34:35 **Q.** Or excuse me, May thirtieth.

10:34:38 **A.** I have no present recollection of it.

10:34:40 THE COURT: Mr. Moody, you have established
10:34:42 that the discovery process has continued from day one
10:34:46 through the trial. Fantastic. Get to the CI issue if
10:34:51 you are going to because does that contain CI issue
10:34:55 information?

10:34:55 MR. MOODY: Well --

10:34:57 THE COURT: Because that's -- that's the basis
10:34:59 of this, okay? Not whether the DA's Office continued
10:35:02 their obligation under discovery, that's not what's

10:35:05 being alleged, it's being alleged they didn't do one
10:35:09 issue under discovery. Good job for the DA's Office.
10:35:12 They continued discovery. I understand that. Thank
10:35:14 you. Get to the CI stuff.

10:35:56 (Whereupon, there was a pause in the
proceeding.)

(People's Exhibit SS was marked for
10:37:25 identification).

10:37:25 **Q.** Showing you Exhibit SS and attached documents, do
10:37:29 you have any recollection of receiving any of those
10:37:32 documents?

10:37:47 **A.** Not presently.

10:37:52 MS. PEEBLES: Can I see the exhibit please?

10:37:54 MR. MOODY: Sure.

10:37:55 THE COURT: Is the question receiving or
10:37:57 seeing, Mr. Moody?

10:37:58 MR. MOODY: Well, receiving and seeing.

10:38:15 (Whereupon, there was a pause in the
10:39:51 proceeding.)

10:39:51 MS. PEEBLES: What are you referencing
10:39:53 specifically, Mr. Moody?

10:39:57 MR. MOODY: Specifically in this -- in the
10:40:00 attachments with this June six letter.

10:40:05 THE COURT: June sixth of ninety-five?

10:40:07 MR. MOODY: Yes. June sixth of ninety-five is

10:40:18 a copy of Defendant's Exhibit L is it not?

10:40:25 THE WITNESS: Yes.

10:40:27 MS. PEEBLES: Judge, I'm going to object.
10:40:29 That's not referenced in the -- in the cover letter.
10:40:32 It's a stack of documents along with a cover letter
10:40:35 attached, and it appears that Mr. Moody is acting as
10:40:39 though that report was in with that cover letter, and
10:40:44 it's not referenced in the cover letter. I believe
10:40:47 it's misleading, and I've never seen that cover letter,
10:40:50 and again, it doesn't -- it does not reference that
10:40:53 Kleist report. The cover letter we received from the
10:40:57 District Attorney's Office in response to our papers
10:41:00 had a generic cover letter stating that it was turned
10:41:03 over to Mr. Fahey on May sixteenth before the start of
10:41:07 the trial. Now it appears that Mr. Moody has lobbed it
10:41:10 in with numerous reports and another cover letter that
10:41:13 makes specific reference to documents but not the
10:41:16 Kleist report.

10:41:17 THE COURT: I'm going to allow it in but it's
10:41:20 a weight issue in terms of whether or not it was
10:41:23 clearly referenced because Exhibit S seems to be quite
10:41:27 voluminous, is that a fair statement?

10:41:29 MR. MOODY: Yes, and when Mr. Dodd testifies,
10:41:32 he will testify about this exhibit.

10:41:34 THE COURT: Assuming Mr. Dodd testifying too.

10:41:36 MR. MOODY: Yes. At this point I'm not
10:41:37 offering it other than to say --

10:41:40 **Q.** And so you could just take Exhibit L and that
10:41:45 portion of SS, that is the photocopy that has the two
10:41:50 stamps on it, one dated May seventeenth with -- May
10:41:56 sixteenth or seventeenth with the DA's Office and then May
10:41:58 twenty-third with the Sheriff's Department, is that
10:42:00 accurate?

10:42:00 **A.** It has that stamp on it.

10:42:20 **Q.** Now, when you testified that you had never seen
10:42:45 Exhibit 11-A --

10:42:48 **A.** Yep.

10:42:48 **Q.** -- that document is the one that only has the one
10:42:52 stamp. Now when you say you never saw it, do you not have
10:42:55 a recollection of getting it or are you sure that you never
10:42:58 got it?

10:42:58 **A.** If I had received this six months after I requested
10:43:02 it, in the middle of trial, when my defense was already
10:43:06 prepared, I would have raised holy hell about it. There
10:43:08 would have been sanctions.

10:43:14 **Q.** Now, with regard to the three reports, ten, nine and
10:43:36 eight, that you have in front of you, you testified on
10:43:40 direct that you were aware of the information in Exhibit
10:43:44 10, is that accurate?

10:43:45 **A.** Yes.

10:43:46 **Q.** And that was the information regarding whether or not Ms. Allen was in fact a confidential informant, is that accurate?

10:43:57 **A.** In part.

10:43:58 **Q.** All of those documents refer to a -- the card being dropped in 1991 or 1992, is that accurate?

10:44:20 **A.** No.

10:44:21 **Q.** Which one does not?

10:44:23 **A.** Ten.

10:44:24 **Q.** Pardon?

10:44:24 **A.** Ten.

10:44:25 **Q.** And that is Investigator Anderson's report?

10:44:27 **A.** Correct.

10:44:27 **Q.** Investigator Anderson says though that I believe he talked to her in 1991 or 1992, is that accurate?

10:44:34 **A.** That's exactly what he says.

10:44:35 **Q.** So there is no -- there's nothing in those documents that is anywhere close to two years, within two years of Heidi Allen's disappearance, is that accurate?

10:44:50 **A.** I don't understand your question.

10:44:51 **Q.** Well, there's no information -- the information about her being a CI is at least two years old according to that, is that accurate, in 1994?

10:45:00 **A.** Yeah, that would seem accurate.

10:45:03 **Q.** So there's no indication in any of those reports

10:45:09 that she was in any way a CI in 1994 or 1993, is that
10:45:17 accurate?

10:45:18 **A.** It doesn't say that, no.

10:45:20 **Q.** And the card being dropped in 1992 would have been
10:45:27 at least two years before she disappeared, is that
10:45:29 accurate?

10:45:30 **A.** It may be.

10:45:37 **Q.** Now, with regard to -- do you remember, if I can, do
10:46:13 you remember speaking with a newspaper reporter and the
10:46:18 story being -- and a story about you and Donald Dodd being
10:46:21 done in June of 1995?

10:46:25 **A.** I -- I have read the story.

10:46:27 **Q.** Okay, so --

10:46:31 MR. MOODY: Has this been received? I can't
10:46:33 remember.

10:46:33 MS. PEEBLES: Let me see.

10:46:36 MR. MOODY: The June story.

10:46:38 MS. PEEBLES: No, this was not.

10:47:05 (People's Exhibit TT was marked for
10:47:07 identification).

10:47:07 **Q.** Showing Exhibit TT, this is the article that you
10:47:11 referenced that you're aware of?

10:47:12 **A.** Yes.

10:47:12 **Q.** And there was a description in there of your office
10:47:17 at the time the trial was going on, is that accurate?

10:47:21 THE COURT: Can I have the date?

10:47:22 **A.** You mean is -- is this -- is the description accurate?

10:47:26 **Q.** Well, we'll get to the description. This is June nineteenth of ninety-five. Does the story itself talk about the condition of your office?

10:47:39 **A.** What page am I on, Mr. Moody?

10:47:47 **Q.** Should be right on the front, the first page, I believe it's the first two or three paragraphs.

10:47:53 **A.** Yes, there is a description.

10:47:58 **Q.** And it says in there that there are -- it describes your office in a particular way. Would that -- that description, would that be an accurate description of how your office was at the time?

10:48:09 **A.** I'd say that's in the eye of the beholder. It also says I'm vaguely rumpled and I don't ever recall being vaguely rumpled.

10:48:18 **Q.** Okay, well, the description -- would you -- would you say that your office was organized at the time?

10:48:28 **A.** I'm sorry, I didn't hear your question.

10:48:31 **Q.** At the time the trial was going on or -- would you say that your office was organized?

10:48:37 **A.** In an unorthodox way.

10:48:40 **Q.** And did you -- and with regard to the -- to what the reporter described as a mess, did you -- did you respond

10:48:47 that it wasn't always this bad but it's not much better?
10:48:50 Do you remember saying that?

10:48:51 **A.** I might have. It was pretty -- pretty jocularly.

10:48:55 **Q.** With regard to the organization of your file, do you
10:48:58 remember an incident where Judge Walsh came to your house
10:49:01 for the two of you to sit down and discuss the file and you
10:49:03 went up to your attic?

10:49:05 **A.** The office I had in the third floor.

10:49:07 **Q.** Yes.

10:49:07 **A.** Yes.

10:49:08 **Q.** And do you remember what Judge Walsh's reaction was
10:49:12 when he got up to your attic and you --

10:49:15 MS. PEEBLES: Objection, Your Honor.

10:49:16 THE COURT: What is -- what's the relevance of
10:49:19 Judge Walsh's --

10:49:20 MR. MOODY: Well, Judge, I believe Judge Walsh
10:49:22 will testify that he went over to the house and he will
10:49:24 describe what he saw when he got over there and how the
10:49:27 file was organized.

10:49:28 THE COURT: Okay, Judge Walsh is not Judge
10:49:31 Fahey. They may organize differently, correct?

10:49:34 MR. MOODY: Pardon?

10:49:37 THE COURT: They may organize differently.

10:49:37 MR. MOODY: But they were at Judge Fahey's
10:49:38 house and it was Judge Fahey's file they were going to

10:49:42 work from.

10:49:42 THE WITNESS: Judge Walsh is a neat freak.

10:49:45 THE COURT: Hold on, Judge. I'll allow the
10:49:45 question because this is all open to interpretation.

10:49:48 **Q.** Did Judge Walsh have a reaction when he got there?

10:49:51 **A.** He may have. I don't recall. It wouldn't surprise
10:49:53 me if he did.

10:49:55 **Q.** You don't remember him declaring that he couldn't
10:49:58 work from that file because it was unorganized?

10:50:02 **A.** He probably couldn't. He's very different than I am
10:50:04 in terms of his organizations.

10:50:06 **Q.** How did you organize the file?

10:50:09 **A.** Into folders concerning in which I included what was
10:50:15 relevant to the particular subject matter.

10:50:19 **Q.** Now, you mentioned on direct that you had requested
10:50:26 in December, on December eighth, that the file of Heidi
10:50:33 Allen's confidential informant be disclosed. Do you
10:50:37 remember testifying about that?

10:50:38 **A.** Yes.

10:50:38 **Q.** And you testified that you were never provided with
10:50:43 the file, is that correct?

10:50:44 **A.** Yes.

10:50:45 **Q.** When you -- when you -- when you discovered that
10:50:51 Heidi Allen had a diary prior to sentencing, did you
10:50:58 reference the confidential informant file again?

10:51:01 **A.** No.

10:51:03 **Q.** Did you ever send any kind of followup request not having -- since you never got the file, any kind of written request?

10:51:14 **A.** We were told she wasn't used as an informant, so no, I didn't.

10:51:19 **Q.** Okay, wasn't used as an informant. Is that different than being an informant?

10:51:24 **A.** They interviewed her and she had no useful information and therefore they didn't use her as an informant. That's what we were advised.

10:51:31 **Q.** Okay, but you were requesting the file such as it was back on December eighth. My question is did you ever follow up to find out if there was a file either by writing or after you discovered the -- the --

10:51:45 **A.** Not once it was represented to us that she wasn't an informant.

10:51:49 **Q.** Now, you -- you discovered at some point that during Richard's trial there had been some questioning of Brett Law, maybe some other people, regarding the contents of the -- of the diary, is that accurate?

10:52:09 **A.** I -- I was -- I'm informed -- I was informed, I was not -- I was not at Richard's trial, that Richard's jury was informed that there was no mention of either of the Thibodeaus in Heidi Allen's diary, diaries, 1993 and 1994.

10:52:27 **Q.** And how were you informed about that?

10:52:29 **A.** Judge Walsh.

10:52:31 **Q.** Did Judge Walsh also tell you that he had
10:52:34 cross-examined investigator, or excuse me, he wasn't an
10:52:37 investigator at the time, but Deputy VanPatten about the CI
10:52:40 card?

10:52:41 **A.** He -- he did not tell me that.

10:52:43 **Q.** Now with regards to Exhibit 8, 9 and 10, you have
10:53:02 never made a search of the file on your own to determine
10:53:04 whether those documents are in there, is that accurate?

10:53:07 **A.** That's accurate. I don't have my file.

10:53:56 MR. MOODY: I have no further questions,
10:53:58 Judge.

10:53:58 MS. PEEBLES: Just a couple followup
10:54:01 questions.

10:54:01 THE COURT: Sure. Those were not moved in,
10:54:29 Mr. Moody?

10:54:31 MR. MOODY: I think these were all actually
10:54:31 moved in. The two affidavits.

10:54:34 THE COURT: Court's exhibit.

REDIRECT EXAMINATION

10:54:44 BY MS. PEEBLES:

10:54:44 **Q.** Good morning, Judge.

10:54:47 **A.** Good morning.

10:54:47 **Q.** Just a quick followup, just so we're clear, there's

10:54:48 no question that you were aware of Roy Lortie's report.

10:54:51 **A.** Yes.

10:54:52 **Q.** And in fact, that's the reason you specifically 10:54:55 requested whatever file they were referencing concerning 10:54:59 Heidi Allen.

10:55:00 **A.** Yes.

10:55:01 **Q.** Now, were you ever provided any type of lead sheet 10:55:07 suggesting that Heidi Allen was an informant?

10:55:10 **A.** No, not that I recall.

10:55:14 **Q.** And I think you mentioned what would you have done 10:55:24 had you received information concerning Heidi Allen's 10:55:27 status as an informant during the course of Gary 10:55:31 Thibodeau's trial.

10:55:32 **A.** I would have again used it to demonstrate that -- 10:55:45 the fact that information had been disclosed would have led 10:55:50 others to -- could have led others to do harm to her. 10:55:56 There was no -- I had been provided nothing to suggest 10:56:01 there was any link between Heidi Allen and Gary Thibodeau 10:56:04 or Richard Thibodeau, so certainly the fact that her -- her 10:56:09 identification, whatever you call it, had been dropped and 10:56:13 disclosed, would clearly have provided others with a motive 10:56:19 to harm her.

10:56:19 **Q.** And what would you have done had you received that 10:56:23 during the middle of Gary Thibodeau's trial? Would you 10:56:27 have asked for a postponement?

10:56:28 **A.** I would have asked for -- probably would have asked for a mistrial. 10:56:30

10:56:34 MS. PEEBLES: No further questions.

10:56:45 MR. MOODY: Nothing further.

10:56:46 THE COURT: Judge, you can step down. Thank you very much. 10:56:47

10:56:50 MR. OAKES: Excuse me.

10:56:51 THE COURT: Hold on.

10:56:53 THE WITNESS: Hope springs eternal.

10:57:05 (Whereupon, there was a pause in the proceeding.) 10:57:19

10:57:19 MR. MOODY: Nothing further.

10:57:20 THE WITNESS: Thank you.

10:57:21 THE COURT: Thank you. Drive safely.

10:57:24 THE WITNESS: Thanks.

10:57:25 THE COURT: Ms. Peebles, your next witness?

10:57:28 MS. PEEBLES: The defense will call William Pierce. 10:57:31

10:58:12 THE CLERK: Stand up here. Raise your right hand, put your left hand on the Bible. 10:58:16

10:58:18 WILLIAM PIERCE, Called as a witness, having been duly sworn, was examined and testified as follows: 10:58:19

10:58:19 THE CLERK: Please state your name for the record. 10:58:28

10:58:28 THE WITNESS: William F. Pierce.

10:58:30 THE CLERK: Spell your last name.

10:58:32 THE WITNESS: P-I-E-R-C-E.

10:58:34 THE CLERK: Have a seat please.

10:58:36 THE WITNESS: Thank you.

10:58:36 THE COURT: Mr. Pierce.

10:58:37 THE WITNESS: Yes.

10:58:38 THE COURT: Have a seat please. Before we
10:58:40 start, I'm going to ask you whether or not you consent
10:58:43 to having your testimony audio and video taped.

10:58:46 THE WITNESS: No, I don't.

10:58:47 THE COURT: You don't want it?

10:58:48 THE WITNESS: No.

10:58:49 THE COURT: You do not want to be video taped.

10:58:51 THE WITNESS: I really don't care. It doesn't
10:58:53 matter one way or the other.

10:58:54 THE COURT: I need a yes or a no. Either you
10:58:57 want it or not. I need a consent. If you don't want
10:58:59 it, it's not a big deal.

10:59:00 THE WITNESS: I don't -- I don't like to have
10:59:03 my face put forward to the public.

10:59:05 THE COURT: I can take that as a non-consent.

10:59:08 THE WITNESS: Okay, because there's
10:59:09 extenuating circumstances.

10:59:11 THE COURT: Okay.

DIRECT EXAMINATION

10:59:13 BY MS. PEEBLES:

10:59:14 Q. Mr. Pierce, how old you?

10:59:15 A. I'm seventy-nine.

10:59:16 Q. And do you live in Oswego County?

10:59:20 A. Yes, I do.

10:59:20 Q. How long have you lived in the area, in Oswego
10:59:23 County?

10:59:23 A. Well, except for my military time, my entire life.

10:59:29 Q. Okay, are you currently working?

10:59:37 A. No, I'm retired.

10:59:39 Q. Where are you retired from?

10:59:40 A. Armstrong World Industries.

10:59:43 Q. And how long had you worked at Armstrong?

10:59:46 A. Around forty-three years.

10:59:51 Q. During your employment with Armstrong, did you hold
10:59:55 any positions in your union?

10:59:56 A. I was an officer my local for about ten years.

10:59:59 Q. After you retired from Armstrong, did you work
11:00:03 anyplace else?

11:00:04 A. Yes. I worked for Golden Sun for a year, school
11:00:10 bus, and then I went to Liverpool and drove school for
11:00:16 Liverpool district school.

11:00:18 Q. And how many years did you do that?

11:00:20 A. Well, it was around -- it was 2000, and 2006 I
11:00:28 stopped driving.

11:00:29 **Q.** Now, having lived in this Oswego County area your entire life aside from your military service, are you familiar with the intersection of 104 and 104B?

11:00:41 **A.** Very well, yes.

11:00:42 **Q.** And throughout the past twenty years, how often do you drive through that intersection?

11:00:48 **A.** Well, the last ten years I haven't been going up there only once in a great while, but before that, it was about -- during the summertime it was about every weekend.

11:01:02 **Q.** And why would you -- what -- what would lead you to have to go through that intersection, why would you be driving through that intersection?

11:01:08 **A.** I had a camper up at Brennan's Beach.

11:01:11 **Q.** Now I'm going to ask you some questions about Easter morning on April third of 1994. Did you drive by the convenience store at the intersection of 104 and 104B that morning?

11:01:23 **A.** Yes, I did.

11:01:23 **Q.** Where were you driving to?

11:01:25 **A.** I was driving to Brennan Beach to check on my trailer.

11:01:29 **Q.** Was anyone driving with you at the time?

11:01:31 **A.** I was alone.

11:01:32 **Q.** Do you recall what time it was?

11:01:34 **A.** Not particularly, but it was any time from

11:01:39 seven-thirty to ten. I'm not positive exact time.

11:01:43 **Q.** When you were near that intersection, what did you
11:01:46 see?

11:01:47 **A.** Well, I was stopped in a line of traffic, and I was
11:01:56 waiting for cars -- well, I was waiting for traffic, and I
11:02:01 looked to the left, and there was this white van with a lot
11:02:07 of rust on the side of it, and there was a man in the
11:02:14 driver's seat and a woman standing next to the driver on
11:02:18 the outside of the van, and the -- I surmised they were
11:02:26 arguing because she turned and walked to the front of the
11:02:32 van and towards the gas pumps.

11:02:38 **Q.** And what did you see after you saw her walk in front
11:02:41 of the van?

11:02:41 **A.** Well, the driver got out of the car, got out of the
11:02:45 van, come around to the front of the van and come up behind
11:02:51 the girl, or the woman, and he hit her behind the right ear
11:02:59 on the base of her neck, her base of her skull, with his
11:03:03 fist, and she folded his -- just like a rag doll.

11:03:09 **Q.** And what did you see after you saw him hit her in
11:03:12 that manner?

11:03:13 **A.** Well, he -- he reached -- he grabbed her before she
11:03:16 hit the ground, and she started -- they started forward,
11:03:21 and there was a -- there was a -- somebody in the passenger
11:03:27 seat that opened the door on the back van, on the -- on the
11:03:33 side of the -- the left side of the van, the passenger side

11:03:36 of the van, and when they -- when -- that's when he -- he
11:03:44 hit her, grabbed her, and they started towards the back of
11:03:48 the van, and that's -- I started to go in traffic.

11:03:52 **Q.** All right, now, did you stop?

11:03:59 **A.** No, I -- I did not stop, no.

11:04:02 **Q.** When is the first time you contacted law enforcement
11:04:05 about what you saw?

11:04:06 **A.** This July.

11:04:10 **Q.** And why was that?

11:04:14 **A.** I didn't want the notoriety.

11:04:17 **Q.** Okay, but why did you -- why did you go in July?

11:04:23 **A.** Because of an article that the sheriff had, and he
11:04:29 spent thirty-nine years or so in police enforcement, and he
11:04:34 said the -- one of the things that bothered him was the
11:04:38 case with Heidi Allen.

11:04:40 **Q.** Okay.

11:04:41 **A.** And at that time I did believe that Thibodeau was
11:04:45 the man that did it and -- 'cause I drew a beard on him,
11:04:52 and he looked close enough, and I figured the sheriffs knew
11:04:57 more than I did and that it was close enough for me to say
11:05:05 you really can't say he didn't or he did.

11:05:07 **Q.** So why did you decide in July to reach out to who,
11:05:10 the sheriff?

11:05:11 **A.** Yes, because of that -- his -- the statement in the
11:05:16 Palladium Times.

11:05:17 **Q.** Did you think you were helping the Sheriff's Department?

11:05:20 **A.** I was in the belief that --

11:05:22 MR. OAKES: Objection.

11:05:22 **A.** -- I might be able to let a law enforcement officer that had spent all this time in the service to the public to finally be relaxed and say okay, I know now.

11:05:40 **Q.** Mr. Pierce, I'm going to hand you what's been marked as Defense Exhibit 132 and ask if you can take a look at that, what's depicted on Defense Exhibit 132.

11:06:06 **A.** What was the question?

11:06:07 **Q.** Is that the van you saw the morning you drove by the D&W?

11:06:11 **A.** No, it was not.

11:06:15 **Q.** Mr. Pierce, now I'm going to hand you what's been marked as Defense Exhibit 138.

11:06:40 THE COURT: 138?

11:06:41 **Q.** 138, and ask if you can take a look at that photograph, and who is depicted in that photograph?

11:06:48 **A.** Mr. Steen.

11:06:50 **Q.** Do you recognize Mr. Steen as the man you saw the morning you drove by the D&W?

11:06:56 MR. OAKES: Objection, Your Honor, leading.

11:06:58 THE COURT: I'll allow it. You have the right to cross-examine him. Answer the question.

11:07:04 THE WITNESS: Answer it?
11:07:04 THE COURT: Sure.
11:07:05 THE WITNESS: Yes, it is.
11:07:07 **Q.** Now, at some point you were shown a photo array by
11:07:26 investigators. Do you recall when that was?
11:07:29 **A.** Yes. Detective Pietroski.
11:07:33 **Q.** And when was that, sir, if you remember?
11:07:35 **A.** That was in July -- or wait a minute now. It was
11:07:41 after I saw Steen's picture in the paper.
11:07:47 **Q.** Do you recall roughly when that would have been?
11:07:50 **A.** About ten, twelve days after I had gone and signed
11:07:55 that statement to -- for Pietroski.
11:07:58 **Q.** Now, were you able to identify Mr. Steen in that
11:08:02 photo array?
11:08:04 **A.** No.
11:08:04 **Q.** And why not?
11:08:07 **A.** Well, for one thing I've never -- I never -- I
11:08:10 didn't -- I don't know the man, I never saw him in my life
11:08:14 before except for this one picture that's embedded in my
11:08:20 mind, and I wouldn't recognize him if he walked past me
11:08:24 right here.
11:08:24 **Q.** Did the photo array --
11:08:26 **A.** Without a beard.
11:08:27 **Q.** The photo array that you were shown by Investigator
11:08:30 Pietroski depict Mr. Steen with any facial hair?

11:08:33 **A.** No, it did not.

11:08:35 **Q.** And when was it you were able to identify the man you saw as Mr. Steen in the parking lot that morning?

11:08:45 **A.** When was it that I could identify him?

11:08:48 **Q.** Yes.

11:08:49 **A.** When the Post-Standard had published three photos of men, and plus some other photos of a couple girls and stuff, but they had three photos, and Steen was one of these photos, in this photo, and right then and there I knew that if I'm allowed to say it, Thibodeau was not the man that did it.

11:09:18 THE COURT: I'm going to strike the part he did not do it.

11:09:20 THE WITNESS: Pardon?

11:09:22 THE COURT: Nothing, just for me.

11:09:23 MS. PEEBLES: No further questions. Thank you, Mr. Pierce.

11:09:26 THE WITNESS: Okay.

11:09:51 CROSS-EXAMINATION

11:09:57 BY MR. OAKES:

11:09:58 **Q.** Good morning, Mr. Pierce.

11:10:02 **A.** Good morning.

11:10:04 MR. OAKES: Your Honor, is there a microphone?

11:10:07 THE COURT: I thought -- have you been using one?

11:10:10 MR. MOODY: I -- I haven't been using one.

11:10:12 THE COURT: Sure.

11:10:18 MR. OAKES: Actually can you hear me okay?

11:10:20 THE COURT: I can hear him. Ms. Peebles, can
11:10:23 you hear him?

11:10:24 MS. PEEBLES: I have a hard time hearing Mr.
11:10:26 Oakes.

11:10:26 MR. OAKES: Thank you.

11:11:20 **Q.** Good morning, Mr. Pierce. Can you hear me okay now?

11:11:22 **A.** Yes. I could hear you before.

11:11:24 **Q.** Okay. Mr. Pierce, you were describing to Ms.
11:11:28 Peebles the morning of Easter Sunday of 1994.

11:11:32 **A.** Yes.

11:11:33 **Q.** Now you're going up to Brennan's Beach to check on
11:11:38 your camp that morning?

11:11:38 **A.** Yes.

11:11:38 **Q.** And what were the weather conditions?

11:11:40 **A.** Pardon?

11:11:41 **Q.** What were the weather conditions at that time?

11:11:43 **A.** The weather conditions were very slippery. There
11:11:47 was about three to six inches of slush, snow had fell that
11:11:52 night, real wet snow, and it was -- hadn't been plowed yet,
11:11:59 all the roads, and where I was sitting in 104 was pretty
11:12:04 slushy.

11:12:05 **Q.** Okay, so there was snow or slush in the roadway?

11:12:09 **A.** Yes, there was.

11:12:10 **Q.** Okay, and was there snow and slush in the parking lot in the D&W at that time?

11:12:18 **A.** Could be. It should be.

11:12:21 **Q.** Do you have a recollection whether there was snow or ice or snow or slush in the driveway or parking lot of the D&W?

11:12:31 **A.** I have no reason to even consider it.

11:12:34 **Q.** Okay, but you were looking in that direction and observing what happened, correct?

11:12:39 **A.** Yes.

11:12:39 **Q.** Let me ask you did you have any snow built up on your car, the windshield or the hood, anything like that?

11:12:46 **A.** No.

11:12:46 **Q.** Was there any snow in any of the vehicles that were in the parking lot, or let me ask you, were there other vehicles in the parking lot besides the van?

11:12:55 **A.** There was one other vehicle sitting in the back side in front of the --

11:13:02 **Q.** Close to the store?

11:13:03 **A.** -- in front of the store.

11:13:05 **Q.** Okay, do you recall what type of vehicle that was?

11:13:08 **A.** Pardon?

11:13:08 **Q.** Do you recall what type of vehicle that was?

11:13:11 **A.** No, I don't.

11:13:12 **Q.** Do you remember the color?

11:13:14 **A.** No.

11:13:15 **Q.** Do you recall whether it had snow on it or slush?

11:13:18 **A.** I don't have any idea.

11:13:21 **Q.** Now you said it was sometime between 7:30 a.m. and
11:13:28 ten a.m. in that morning, correct?

11:13:31 **A.** Yep, yes.

11:13:32 **Q.** You don't have a specific recollection of the time
11:13:38 that it occurred though, correct, that it was 7:45 or eight
11:13:45 a.m., you don't have a specific time?

11:13:46 **A.** No. Let's say it was twenty years ago, exact time
11:13:52 I'd be a little bit foolish to say it was 7:30 or 10:30.

11:13:57 **Q.** Okay.

11:13:57 **A.** I mean it was between a certain time frame.

11:14:03 **Q.** And you were on the roadside, you were on Route 104
11:14:11 heading east, waiting to make a left-hand turn on to 104B?

11:14:16 **A.** That's correct.

11:14:17 **Q.** So as you're heading east then, you would have been
11:14:21 in the -- essentially the south side lane, eastbound lane
11:14:26 is farthest away from store, correct?

11:14:28 **A.** Well, there is a center lane at 104 and 104B. It's
11:14:35 a center lane to turn left. Cars were going by me on the
11:14:40 right and cars were going by me on the left and I was
11:14:43 sitting in a line of traffic.

11:14:45 **Q.** And was it actively snowing at the time?

11:13:12 **Q.** Do you remember the color?

11:13:14 **A.** No.

11:13:15 **Q.** Do you recall whether it had snow on it or slush?

11:13:18 **A.** I don't have any idea.

11:13:21 **Q.** Now you said it was sometime between 7:30 a.m. and
11:13:28 ten a.m. in that morning, correct?

11:13:31 **A.** Yep, yes.

11:13:32 **Q.** You don't have a specific recollection of the time
11:13:38 that it occurred though, correct, that it was 7:45 or eight
11:13:45 a.m., you don't have a specific time?

11:13:46 **A.** No. Let's say it was twenty years ago, exact time
11:13:52 I'd be a little bit foolish to say it was 7:30 or 10:30.

11:13:57 **Q.** Okay.

11:13:57 **A.** I mean it was between a certain time frame.

11:14:03 **Q.** And you were on the roadside, you were on Route 104
11:14:11 heading east, waiting to make a left-hand turn on to 104B?

11:14:16 **A.** That's correct.

11:14:17 **Q.** So as you're heading east then, you would have been
11:14:21 in the -- essentially the south side lane, eastbound lane
11:14:26 is farthest away from store, correct?

11:14:28 **A.** Well, there is a center lane at 104 and 104B. It's
11:14:35 a center lane to turn left. Cars were going by me on the
11:14:40 right and cars were going by me on the left and I was
11:14:43 sitting in a line of traffic.

11:14:45 **Q.** And was it actively snowing at the time?

11:14:48 **A.** No, it was not.

11:14:50 **Q.** What was the weather like? Was it sunny?

11:14:53 **A.** Well, it was an intermittent sun.

11:14:56 **Q.** Okay, so at the time that you made your observations
11:15:00 was it sunny or was it overcast at that moment?

11:15:03 **A.** Well, I think it was a pretty decent amount of light
11:15:14 at that time. Whether the sun was shining or whether it
11:15:19 wasn't, it was kind of a rather clear day.

11:15:22 **Q.** But you don't specifically recall whether the sun
11:15:24 was shining at that point that you made your observations?

11:15:29 **A.** The sun was shining, it was when I pulled up to
11:15:33 the -- to the traffic 'cause the sun was coming from the
11:15:38 front shining in my eyes. I had a pair of sunglasses on
11:15:43 that I wore from where I came from to the place where I
11:15:48 stopped.

11:15:49 **Q.** And so --

11:15:53 **A.** They were glasses that were sun -- trans -- I can't
11:16:02 think of the name right now.

11:16:04 **Q.** Well, that's okay. Were they the kind of glasses
11:16:08 that would get darker if it was sunny out?

11:16:11 **A.** Yes, they were.

11:16:12 **Q.** So were they shaded at the time, your sunglasses
11:16:16 shaded at the time that you made your observations?

11:16:19 **A.** There was a tint to them, yes.

11:16:20 **Q.** Now the van that you say you observed, it was

11:16:26 located at the gas pump?

11:16:28 **A.** The outer gas pumps.

11:16:30 **Q.** Closest to the road?

11:16:32 **A.** Yes.

11:16:32 **Q.** And those -- and those gas pumps are actually kind
11:16:37 of at an angle to --

11:16:39 **A.** The road.

11:16:39 **Q.** 104, correct?

11:16:40 **A.** They were at the time, yes.

11:16:42 **Q.** And you said you observed a woman standing at the
11:16:46 side of the van?

11:16:47 **A.** Yes, I did.

11:16:49 **Q.** Can you describe that woman?

11:16:52 **A.** Yeah. She was tall enough to -- with her head over
11:16:59 the window on the van, the van was a work-style van, it had
11:17:05 no windows on the right, on the driver's side, except for
11:17:09 the driver's door, and she was -- her head was above the
11:17:15 window so --

11:17:18 **Q.** And I just want to be clear, Mr. Pierce, when you
11:17:20 say her head was above the window, again, if we take the
11:17:24 window, it's maybe two feet high, would you agree with
11:17:27 that, a window's probably about --

11:17:28 **A.** Yeah, roughly, yeah, on a van.

11:17:30 **Q.** Would you -- are you saying that her head came above
11:17:34 the bottom of the door so she could look in or was her head

11:17:36 basically at the top of the window kind of looking down
11:17:39 into the van?

11:17:40 **A.** No, she was shorter than that.

11:17:42 **Q.** Okay.

11:17:43 **A.** She was looking probably straight in more or less at
11:17:48 an angle like this 'cause he was seated in the van.

11:17:53 **Q.** Okay.

11:17:53 **A.** Looking down at her and she was standing near
11:17:58 looking up at him.

11:18:00 **Q.** And what -- what color hair did she have?

11:18:03 **A.** Well, it appeared it was dark.

11:18:06 **Q.** Is that brown, is that black hair?

11:18:10 **A.** I wouldn't say it was black, but it wasn't real
11:18:14 light, no.

11:18:16 **Q.** What was the style of her hair?

11:18:19 **A.** Pardon?

11:18:19 **Q.** What was the style of her hair?

11:18:22 **A.** I couldn't tell you because the hood on the van --
11:18:25 on the jacket she was wearing was up around the back of her
11:18:30 head about this high.

11:18:32 MR. OAKES: And for the record, Your Honor,
11:18:35 the witness made a gesture basically indicating to the
11:18:37 midline of the back of his neck or his head.

11:18:40 **Q.** Would that be accurate, Mr. Pierce?

11:18:41 **A.** Right, yes.

11:18:42 **Q.** And you said she was wearing a jacket. What color was the jacket?

11:18:47 **A.** It was either black or navy blue, and it was a puffy -- one of those puffy jackets.

11:18:53 **Q.** And at that point you said the woman -- now sitting in your vehicle, your windows are rolled up?

11:19:03 **A.** Pardon?

11:19:04 **Q.** As you were sitting in your vehicle, your windows were rolled up?

11:19:07 **A.** No.

11:19:08 **Q.** You had your windows down?

11:19:09 **A.** I had my window down.

11:19:11 **Q.** And could you hear any discussion or any words being exchanged between the two?

11:19:19 **A.** Not a word.

11:19:20 **Q.** Okay, so you don't know whether they were talking or whether they were saying anything to each other, would that be fair?

11:19:27 **A.** I assumed they were a girlfriend and a boyfriend. I assumed this. I also assumed that they were migrants.

11:19:39 **Q.** You --

11:19:39 **A.** Because of the van.

11:19:41 **Q.** Okay.

11:19:42 **A.** And I'd seen these vans around quite a lot with migrant workers.

11:19:49 **Q.** Okay, was there anything about her appearance or the driver's appearance that made you think they were migrant workers?

11:19:56 **A.** They were what?

11:19:56 **Q.** Was there anything about the female's appearance that made you think she was a, quote, "migrant worker?"

11:20:04 **A.** Just the puffy jacket made her look heavyset.

11:20:09 **Q.** Was there anything about the driver that you observed that made you think she was a, quote, "migrant worker?"

11:20:15 **A.** Yeah. His facial features and the beard.

11:20:19 **Q.** Well, what was it about his facial features that made you think -- well, when you say "migrant worker," let me clarify, are you saying you thought he was of Hispanic origin, is that what you mean by "migrant worker?"

11:20:32 **A.** It -- it -- yeah, could have been, yes.

11:20:36 **Q.** So based on your observations, you thought the driver might have been of Hispanic origin?

11:20:43 **A.** I'm saying that he could be other than a full Caucasian. That's what I'm saying. As far as his skin color's concerned, that picture says it all. That's the picture that I just identified for Mrs. Pebbles.

11:21:03 **Q.** Well, how -- the man that you saw get out of the vehicle, how old would you say that man was?

11:21:12 **A.** Well, I -- I figured that he was between thirty-five

11:21:15 and forty-five.

11:21:16 **Q.** Okay.

11:21:17 **A.** That's his appearance was at the time.

11:21:20 **Q.** Okay, all right. So he appeared to be thirty-five
11:21:26 to forty years old.

11:21:27 **A.** That's what I would judge at that time looking at
11:21:31 him. That's what -- I mean can you tell somebody that
11:21:36 you'd never seen before, had a beard, dark hair, how old he
11:21:43 was? When you look at him? I mean really.

11:21:46 **Q.** Well, Mr. Pierce, I guess I'm asking you you're the
11:21:49 one that gave the description thirty-five to forty years
11:21:52 old.

11:21:52 **A.** I told them I thought he was thirty-five to
11:21:54 forty-five years old.

11:21:55 **Q.** So it's --

11:21:56 **A.** That was my assumption.

11:21:57 **Q.** Okay, so we're clear, as you recollect right now,
11:22:02 you believe the male was thirty-five to forty-five years
11:22:05 old.

11:22:06 **A.** Do I believe it? Not now I don't.

11:22:10 **Q.** Okay.

11:22:12 **A.** Because I was told at the time that he was in his
11:22:15 twenties.

11:22:16 **Q.** Okay, who --

11:22:18 **A.** Detective Pietroski.

11:22:20 **Q.** Okay.
11:22:21 **A.** When he told me that I was very much of a failure as
11:22:28 far as a witness is concerned.
11:22:31 **Q.** Well, your testimony is you met with Investigator
11:22:35 Pietroski at some point for a photo array?
11:22:37 **A.** Yes.
11:22:38 **Q.** And during the meeting with Investigator Pietroski,
11:22:43 he advised you that James Steen was in his early to mid-
11:22:46 twenties at the time of this offense, correct?
11:22:48 **A.** Only after I told him I didn't recognize anybody in
11:22:52 the photos. Some of them looked familiar, which we
11:22:56 discussed. He said do you want -- do you want me to make a
11:22:59 note of it. I said no, there's no sense to it because I
11:23:02 can't say this or this one for sure.
11:23:05 **Q.** Well, Mr. Pierce, I'd like to go back to that
11:23:09 Sunday, that Easter morning.
11:23:10 **A.** The what?
11:23:13 **Q.** That Sunday, that Easter morning in 1994.
11:23:16 **A.** Okay.
11:23:16 **Q.** So you're standing on the roadway, and you describe
11:23:19 what you believe to be an assault on a female by the male
11:23:22 in the van, is that correct?
11:23:23 **A.** Yes, I did.
11:23:25 **Q.** And on observing that assault, did you pull into the
11:23:31 driveway to see what was going on?

11:23:33 **A.** There was no way I could at the time or I would have at the time but I couldn't.

11:23:40 **Q.** Why is that?

11:23:41 **A.** Because my position in traffic was past the lower driveway from -- to 104, and the other driveway is on 104B, so I couldn't possibly do anything except sit there.

11:23:58 **Q.** Well, you said you saw the man strike her in the back of the head.

11:24:02 **A.** Yes.

11:24:03 **Q.** And you saw another person in the van, another person was in the passenger side of the van.

11:24:10 **A.** I saw another person open the back door, the side door.

11:24:14 **Q.** Did that person open it from inside the van or outside the van?

11:24:18 **A.** I have no idea.

11:24:21 **Q.** Well, you said you saw a person open the door. Was that person inside?

11:24:25 **A.** I saw the door open.

11:24:27 **Q.** Okay.

11:24:28 **A.** Who -- who opened it I don't have any idea, but Mr. Steen was standing in the front holding Heidi at that time, which I found out later that it was Heidi at the time. I had no idea who it was or what was going on.

11:24:46 **Q.** So you saw the passenger door open up. Was it a

11:24:53 sliding door?

11:24:53 **A.** Yes.

11:24:54 **Q.** On the side of the van, on the passenger side of the van.

11:24:59 **A.** Yes.

11:25:00 **Q.** Okay. Now, Mr. Pierce, your testimony that the only window's on the driver's side?

11:25:07 **A.** Right.

11:25:08 **Q.** Was the driver's side door?

11:25:09 **A.** Right.

11:25:10 **Q.** Correct?

11:25:10 **A.** Yep.

11:25:11 **Q.** Okay, there are no windows along the whole side of the driver's side, correct?

11:25:18 **A.** That's correct.

11:25:19 **Q.** Okay. And you were looking at the driver's side of the van from where you were.

11:25:24 **A.** That's right.

11:25:26 **Q.** Okay, how -- which way was the van facing? Was it facing toward Oswego or was it facing toward --

11:25:39 **A.** The van --

11:25:40 **Q.** -- Mexico?

11:25:40 **A.** -- was facing towards 104.

11:25:42 **Q.** Okay, was --

11:25:43 **A.** It was at a slant.

11:25:45 **Q.** Okay, was it pulled up next to a pump?
11:25:50 **A.** Yes. It was close to the pump, yes.
11:25:55 **Q.** Pulled up in such a way that looked like somebody
11:25:57 may have been filling it up or might have filled it up or
11:26:00 potentially could have?
11:26:01 **A.** That's correct.
11:26:53 (People's Exhibit UU was marked for
11:26:55 identification).
11:27:00 MR. OAKES: Your Honor, may I approach the
11:27:02 witness please?
11:27:02 THE COURT: Sure.
11:27:03 **Q.** Mr. Pierce, I'm going to hand you what's been marked
11:27:09 for identification as Exhibit UU, color photograph. Do you
11:27:13 generally recognize what's shown in that photograph, sir?
11:27:17 **A.** Yeah. There's two pumps there.
11:27:21 **Q.** Okay, and does that photograph fairly and accurately
11:27:24 show the location of the pumps and the location of the
11:27:28 store on April third of 1994?
11:27:30 **A.** This picture shows the exact -- the A&W and two fuel
11:27:38 pumps, yes.
11:27:39 **Q.** Okay, and was that the condition of the fuel pumps
11:27:43 and that station on April third of 1994?
11:27:46 **A.** I don't believe they were.
11:27:47 **Q.** You don't believe so?
11:27:48 **A.** No.

11:27:50 **Q.** Okay.

11:27:50 **A.** There was another line of pumps out here farther.

11:28:02 **Q.** So your testimony is that in addition to these two sets of fuel pumps, there is another whole set of fuel pumps closer to the road?

11:28:09 **A.** There's another pump closer to the road, yes. 104.

11:28:13 **Q.** Okay.

11:28:14 **A.** This photo does not show it.

11:28:16 **Q.** Okay, was that a regular gasoline pump?

11:28:20 **A.** I don't know what kind of a pump it was. All's I know was the truck was sitting there, the pump was there, and the scene took place at that -- at that pump, the outer pump. I have been in that store just twice in forty years.

11:28:43 **Q.** Well, Mr. Pierce, I guess what I'm wondering is if you are looking at the driver's side of the van --

11:28:51 **A.** Yep.

11:28:52 **Q.** -- and it doesn't have any windows along the body of the van --

11:28:55 **A.** Right.

11:28:56 **Q.** -- how did you see the passenger side door open?

11:28:59 **A.** Through the driver's window 'cause the van was on a slant to 104. It was -- instead of being square in front of me, it was at an angle like this (indicating), all right, and I was sitting here far enough advance where I could see through the driver's window and part of the

11:29:23 windshield, the passenger side of the van, inside the van,
11:29:29 and I saw the door open on the back sliding door. I saw
11:29:35 that open 'cause a white space came out. Whether they
11:29:40 opened the door or they slid it down or whatever, it was
11:29:43 there.

11:29:44 **Q.** Okay.

11:29:45 **A.** I saw it open.

11:29:46 **Q.** So you were basically situated then on the front of
11:29:51 the van looking in the van kind of at an angle from the
11:29:53 front driver's side?

11:29:57 **A.** Like I said, I was parked on 104 and I was waiting
11:30:03 for traffic.

11:30:06 **Q.** Okay.

11:30:06 **A.** The van was parked on a slant towards me. By
11:30:15 looking through the front window, windshield, and the
11:30:17 driver's window, I could see the back door slide open. Not
11:30:23 the back door, but the passenger side door. Not the front
11:30:30 door, but the door in back of the front seat.

11:30:33 **Q.** Mr. Pierce, as you were waiting to turn, were you
11:30:36 the first vehicle waiting to turn on to 104B?

11:30:40 **A.** I was not.

11:30:40 **Q.** Okay, where were you in that line?

11:30:43 **A.** I'd say I'd -- between the fourth and the fifth car
11:30:47 or vehicle behind -- at that -- in that line, then there
11:30:53 was three or four vehicles behind me.

11:30:57 **Q.** And were there vehicles on 104B waiting to turn onto 104 at that same time?

11:31:04 **A.** Well, they were in the center lane. If they weren't, they were in the wrong lane, yes.

11:31:08 **Q.** So as best as you were -- can recall, there were between five and seven other vehicles in that same intersection?

11:31:19 **A.** I'd say at least that many, yes, at the minimum.

11:31:23 **Q.** So again, if every vehicle was occupied by just a driver, no passengers, there's at least five or seven other people that would have seen the incident you just described.

11:31:35 **A.** That's exactly what I'm saying. I was not the only one at that intersection that should have saw this happen. There's other people out there that saw it, and the woman in the car behind me was pointing in that direction and the man behind the wheel was shaking his head.

11:31:57 **Q.** Okay.

11:31:57 **A.** And that's what I saw, so apparently she saw it too, the same thing that I did.

11:32:03 **Q.** Okay, well, Mr. Pierce, eventually you made the turn onto 104B. Well, let me ask you. Did that van pull away before you made your turn?

11:32:13 **A.** No. It was still sitting there just like it was -- it was nonchalant. This is why at that time that I didn't

11:32:21 go back.

11:32:23 **Q.** When you said you didn't go back --

11:32:29 **A.** Yes.

11:32:29 **Q.** -- you mean why you didn't pull in?

11:32:31 **A.** I tried to pull in at the time but I couldn't because of the road conditions. My van -- the right front wheel, it's a -- it was a gray Safari van, and the right front wheel would catch when I spiked the brakes, and whenever I spiked the brakes, if I was on ice or snow, that wheel would grab and slide. My van started to go slide sideways, and there was vehicles coming, so I straightened it out and kept on going. By that time I was past the driveway, or three-quarters of the way past the driveway, so I kept on going figuring I'd turn around.

11:33:20 **Q.** Let's take a step back a moment.

11:33:23 **A.** Okay.

11:33:24 **Q.** Before that gas station there is an entryway on the 104 side, correct?

11:33:29 **A.** Um hum.

11:33:30 **Q.** And then there's also an entry into the gas station on the 104B side, correct?

11:33:35 **A.** Right, yes.

11:33:36 **Q.** And so you were stationary at the time you observe this incident you've described, correct?

11:33:41 **A.** That's correct.

11:33:41 **Q.** And you were essentially parked in the turning lane of 104?

11:33:46 **A.** That's correct.

11:33:47 **Q.** So when you made your turn onto 104B, you said the van was still there, correct?

11:33:53 **A.** Yes.

11:33:54 **Q.** Okay, was that female inside of the van at that point?

11:33:57 **A.** It was nobody anyplace 'cause I looked back as I was going by, I looked back to see if I could see anything.

11:34:06 **Q.** Okay.

11:34:07 **A.** There was nobody inside, there was nothing, just the van.

11:34:11 **Q.** Nobody inside of the van?

11:34:13 **A.** Nobody got out of the van or entered it. As far as I knew, they were already inside the van.

11:34:21 **Q.** Okay, did you see whether there was any commotion going on in the van?

11:34:26 **A.** No. I was too busy trying to keep my vehicle straight.

11:34:31 **Q.** Well, let me ask. I'm just trying to understand, Mr. Pierce. You're parked -- essentially parked stationary on 104 when you see the male grab the female.

11:34:42 **A.** I saw him hit her.

11:34:45 **Q.** Okay.

11:34:46 **A.** He didn't grab her until she started to go down. He never touched her until he hit her.

11:34:51 **Q.** Are you still stationary at the time she starts to go down?

11:34:55 **A.** Yes, I am.

11:34:56 **Q.** Once he catches her, what does he do with her?

11:35:00 **A.** He just catches her under the arms and starts walking forward.

11:35:05 **Q.** Toward the store or toward the van?

11:35:08 **A.** Towards the side of the van.

11:35:10 **Q.** Are you still stationary at that point?

11:35:12 **A.** Yes, I am.

11:35:13 **Q.** Do you see him get to the van with her?

11:35:17 **A.** Pardon?

11:35:17 **Q.** Do you see him get her to the van?

11:35:19 **A.** No, I did not. I couldn't see only heads there.

11:35:24 **Q.** Okay, well, did you see her body or their bodies move into the van where the door was, where the side door was opened?

11:35:34 **A.** I saw her only when he grabbed her and he started forward with her. That's the last I saw of the woman.

11:35:42 **Q.** But you're still stationary at this point, correct?

11:35:45 **A.** Yes, but traffic is starting to move at that time.

11:35:49 **Q.** And I guess, Mr. Pierce, what I'm having trouble understanding is you said you're looking at kind of the

11:35:56 head-on view of the van, the driver's side door, so
11:35:58 you're --
11:35:58 **A.** I'm looking at an angle.
11:36:00 **Q.** Right, but you said you could see through the van
11:36:03 well enough to see the door open?
11:36:05 **A.** Yes.
11:36:05 **Q.** But you can't see well enough to see this woman go
11:36:08 into the van?
11:36:09 **A.** No.
11:36:10 **Q.** Okay.
11:36:11 **A.** 'Cause I was moving forward at that time and I would
11:36:16 lose track of any light or any sense of anything in that
11:36:21 van or getting in the van or getting out of the van except
11:36:26 for the driver's door.
11:36:26 **Q.** So based on your description, would it be fair to
11:36:30 say the woman was unwillingly being taken into the van?
11:36:34 **A.** I would say very much that she was unconscious.
11:36:37 **Q.** Okay.
11:36:38 **A.** And she couldn't object one way or the other.
11:36:42 **Q.** Okay, you were -- were you concerned about her
11:36:44 well-being?
11:36:45 **A.** Yes, I was.
11:36:46 **Q.** So at the point that you see that though you're
11:36:50 still on 104.
11:36:51 **A.** That's correct.

11:36:52 **Q.** You eventually make the turn onto the 104B, correct?

11:36:56 **A.** That's correct.

11:36:57 **Q.** And once you turn onto 104B, you could pull into
11:37:00 that second driveway to pull into the parking lot?

11:37:02 **A.** That's correct.

11:37:03 **Q.** Did you pull into that parking lot?

11:37:05 **A.** No, I did not.

11:37:06 **Q.** Why not?

11:37:07 **A.** Because my van was sliding. I tried to pull in, but
11:37:13 my van was sliding, and there's another vehicle coming, so
11:37:16 I straightened my van out, and by that time I was already
11:37:20 three-quarters of the way past the entrance or I was past
11:37:23 the entrance, one or the other, and I kept on going, and I
11:37:28 was going to turn around at another location.

11:37:31 **Q.** You were going to turn around?

11:37:33 **A.** I was going to turn around, yes.

11:37:34 **Q.** Why didn't you?

11:37:36 **A.** Well, by the time I got to the -- to a place where I
11:37:40 could turn around, I had already decided in my own mind
11:37:45 that I had seen a domestic dispute, and you don't get -- at
11:37:51 that time you didn't get between a domestic -- in two
11:37:57 combatants.

11:37:59 **Q.** Well, Mr. Pierce, you said you lived in Oswego
11:38:03 County all of your life except for the time you were in the
11:38:05 military, correct?

11:38:08 **A.** Yeah. Yes.

11:38:10 **Q.** So from 1994, that Easter Sunday till present, you have lived in Oswego County your entire time?

11:38:18 **A.** Yes, except for when I was on vacation.

11:38:21 **Q.** Okay, but again, your residence was here?

11:38:25 **A.** My residence has always been in Oswego County. Even when I was in the military and overseas I always had my mail sent to RD1 Hannibal.

11:38:41 **Q.** Now, later that day did you see any of the news reports that talked about a woman being -- later that day, that Easter Sunday, did you see any of the news reports about a woman being taken from that store?

11:39:03 **A.** Not that day, no.

11:39:05 **Q.** The next day?

11:39:06 **A.** The next day it was on the news, yes.

11:39:09 **Q.** And in that news report they were talking about a person, a female, being taken from that store?

11:39:17 **A.** Um hum.

11:39:18 **Q.** Just the day before?

11:39:19 **A.** Pardon?

11:39:20 **Q.** When you saw the news reports, they were talking about a female being abducted or kidnapped from the store on that Sunday, Easter Sunday?

11:39:28 **A.** Yes.

11:39:29 **Q.** Now, at that time, seeing that there was an

11:39:34 abduction that morning, did you pick up the phone and call the police that day, the next day, and say, "I may have witnessed this?"

11:39:42 **A.** No, I did not.

11:39:44 **Q.** That week did you pick up the phone and call the police?

11:39:47 **A.** At no time did I do that until I gave the interview to Detective Pietroski.

11:39:55 **Q.** Okay.

11:39:55 **A.** Or I called Sheriff Todd.

11:39:57 **Q.** And that was in July of 2013?

11:40:00 **A.** July, 2000, yes.

11:40:02 **Q.** Two-thousand --

11:40:02 **A.** No, 2014.

11:40:04 **Q.** Okay.

11:40:05 **A.** Fifteen, fifteen, that's what this is.

11:40:08 **Q.** Well, we're in 2015 right now?

11:40:10 **A.** That's right.

11:40:11 **Q.** So it was July of 2014?

11:40:13 **A.** 2015.

11:40:15 THE COURT: I'm set on the year, Mr. Oakes.

11:40:19 MR. OAKES: Okay, thank you.

11:40:25 **Q.** Now in 1994 did you see at some point that Gary Thibodeau had been arrested for the abduction/kidnapping of Heidi Allen?

11:40:36 **A.** Yeah, later on that summer, yes.

11:40:39 **Q.** Okay, and during those news -- did you see that in
11:40:42 the paper or on a television broadcast?

11:40:45 **A.** Both.

11:40:45 **Q.** And as part of that coverage, did they have photos
11:40:49 of Gary Thibodeau?

11:40:50 **A.** Yes.

11:40:51 MR. OAKES: (Handing to Ms. Peebles).

11:42:06 (People's Exhibit VV was marked for
identification).

11:42:07 (People's Exhibit WW was marked for
11:42:08 identification).

11:42:09 **Q.** Mr. Pierce, after Gary Thibodeau's arrest, there
11:42:12 were pictures of him in the paper and pictures of him on
11:42:15 television, correct?

11:42:16 **A.** Yes.

11:42:16 MR. OAKES: May I approach, Your Honor?

11:42:17 THE COURT: Yes.

11:42:18 **Q.** Mr. Pierce, I'm first going to hand you what's been
11:42:23 marked for identification as Exhibit VV.

11:42:25 **A.** Okay.

11:42:26 **Q.** A photograph, sir? Was that one of the photographs
11:42:32 of Gary Thibodeau that was shown in the paper or on TV at
11:42:33 the time that you saw it?

11:42:34 **A.** No. At the time that I saw Gary Thibodeau's picture

11:42:38 was when he had a mustache only. He was clean shaven otherwise.

11:42:44 **Q.** Okay.

11:42:45 **A.** Yes.

11:42:45 **Q.** So at the time that you saw him in two-thousand -- I'm sorry.

11:42:58 (Whereupon, there was a pause in the proceeding.)

11:43:07 **Q.** Mr. Pierce, you said one of the newspapers that you read at the time was the Palladium Times, the Pal Times?

11:43:14 **A.** No. I -- at the time of the -- it was the weekly advertising paper that we get.

11:43:23 **Q.** Okay.

11:43:24 **A.** But at that time, the time of his trial and everything, I didn't read the Pal Times.

11:43:31 **Q.** Okay.

11:43:36 **A.** The Oswego Valley News and the Post-Standard are the papers that I read.

11:43:41 **Q.** So at the time that you saw him in 1994 then, the time you saw Gary Thibodeau in 1994, he only had a mustache?

11:43:50 **A.** That's when I saw him the first time, yes.

11:43:53 **Q.** Okay, and when you saw his picture associated with his arrest, at that time you believed Gary Thibodeau was the guy you saw at the D&W Store didn't you?

11:44:05 **A.** Only after I drew a beard and put it on him.

11:44:08 **Q.** Okay, but so that would have been in the summer of 1994?

11:44:14 **A.** It would have to be if that's when he was arrested and he was being identified at that time in the papers, yes.

11:44:22 **Q.** So at that point it was within probably three or four months after the incident that you witnessed, correct?

11:44:29 **A.** Probably. I'm not -- not sure.

11:44:32 **Q.** Okay, and at the time that you saw Mr. Thibodeau's picture in the summer of 1994, you said you drew a beard on him?

11:44:45 **A.** Yes, I did.

11:44:46 **Q.** And after making that drawing, you believed Gary Thibodeau was the man who had abducted --

11:44:51 **A.** I believed it was close enough and resembled -- there was a similarity there to the man that was -- abducted Heidi, or hit her, hit this woman, I'll put it that way.

11:45:05 **Q.** Well, didn't you tell people when you saw Mr. Thibodeau's picture on the TV --

11:45:12 **A.** Um hum.

11:45:12 **Q.** -- "that's the guy that hit the woman at the convenience store on 104 and 104B Easter morning." Didn't you tell people that?

11:45:20 **A.** No, I did not. Not until I talked to Detective Pietroski.
11:45:24

11:45:26 **Q.** Well, when you saw Mr. Thibodeau's picture, did you
11:45:30 say essentially to yourself hey, that's the guy that hit
11:45:33 the woman at the convenience store on 104 and 104B Easter
11:45:38 morning?

11:45:38 **A.** No. After I drew the beard and a full mustache on
11:45:44 Mr. Pietroski, did I believe at that time it was a
11:45:49 similar -- a similarity there that was close enough, and I
11:45:54 figured the Sheriff's Department had to know more than I
11:45:57 did about it and that they probably had the right man.

11:46:01 MR. OAKES: Jennifer, could I get this marked
11:46:04 please?

11:46:04 (Exhibit XX was marked for identification).

11:46:41 MR. OAKES: Your Honor, may I approach the
11:46:47 witness?

11:46:47 THE COURT: Yes.

11:46:48 **Q.** Mr. Pierce, on July twenty-fifth of 2014, you met
11:46:54 with Investigator Pietroski of the Oswego County Sheriff's
11:46:57 Department didn't you?

11:46:57 **A.** I do believe it was this year.

11:47:00 **Q.** Okay, within this past year?

11:47:03 **A.** Yes.

11:47:04 **Q.** Okay. And did you meet with him at the Oswego
11:47:11 County Sheriff's Department?

11:47:11 **A.** Yes, I did.

11:47:13 **Q.** And you gave a statement to Investigator Pietroski that day.

11:47:17 **A.** Yes, I did.

11:47:18 **Q.** And he eventually typed up what it was you told him?

11:47:21 **A.** Yes, he did.

11:47:22 **Q.** And did he print that off and give you a chance to read it, sir?

11:47:25 **A.** Yes, he did.

11:47:26 **Q.** Do you read and write English?

11:47:28 **A.** Pardon?

11:47:29 **Q.** Do you read and write English?

11:47:30 **A.** Do I read and write English?

11:47:33 **Q.** Yes, sir.

11:47:33 **A.** Well, I hope so.

11:47:35 **Q.** Okay, I just wanted to make sure, sir. So did you review the statement the investigator prepared for you, the investigator typed up?

11:47:45 **A.** Yes, I did, I read it.

11:47:47 **Q.** And you believed it to be correct and accurate?

11:47:51 **A.** At that time I gave it, yes.

11:47:52 **Q.** And then you signed the statement, correct?

11:47:54 **A.** Yes.

11:47:55 **Q.** Mr. Pierce, I'm going to hand you what's been marked for identification as Exhibit XX. Is that -- is that the

11:48:09 statement you gave to Investigator Pietroski, sir?
11:48:11 **A.** I do believe so.
11:48:12 **Q.** Okay, do you need a moment to review it?
11:48:19 **A.** Well, okay, I will.
11:48:22 (Whereupon, there was a pause in the
11:48:28 proceeding.)
11:48:28 **A.** I'm a slow reader by the way.
11:48:30 **Q.** Okay, well, I guess what I'm just asking, Mr.
11:48:32 Pierce, is do you recognize your signature on that
11:48:34 document?
11:48:34 **A.** Yes.
11:48:35 **Q.** That's your signature, sir?
11:48:36 **A.** I'd say so, yes.
11:48:38 **Q.** Okay, Mr. Pierce, I'm going to direct your attention
11:48:42 to a particular segment.
11:48:44 **A.** Okay.
11:48:44 **Q.** Where it says, "I did get a good look." What I'm
11:48:47 going to do is I'm going to read it and ask you to follow
11:48:49 along as I read it, okay?
11:48:51 **A.** Okay.
11:48:51 MS. PEEBLES: I'm going to object if he's
11:48:53 going to read a document that's not in evidence, but if
11:48:55 he's using it to refresh his recollection, I have no
11:48:58 objection.
11:48:58 THE COURT: What's the purpose?

11:49:00 MR. OAKES: For impeachment purposes, Your Honor.

11:49:02 THE COURT: It's a written statement, he can use it for impeachment purposes.

11:49:06 MS. PEEBLES: Well, he hasn't asked him a question to impeach him so I'm wondering --

11:49:09 MR. OAKES: I've laid the foundation. I'm going to ask him the question.

11:49:12 THE COURT: I'll allow it.

11:49:14 THE WITNESS: Pardon?

11:49:14 THE COURT: Nothing. It's between the attorneys.

11:49:16 **Q.** Mr. Pierce, looking at the statement, did you tell Investigator Pietroski, "I did get a good look at the driver that hit the woman and later saw on the news the police had Gary Thibodeau under arrest and I said that's the guy that hit the woman at the convenience store at 104 and 104B Easter morning."

11:49:37 **A.** Um hum.

11:49:38 **Q.** Is that what you told Investigator Pietroski?

11:49:40 **A.** Yes, I did.

11:49:41 **Q.** And again, would you agree with me that in your statement you're basically saying you were pretty certain that it was Gary Thibodeau when you saw it on the news?

11:49:51 **A.** Yes, I was.

11:49:52 **Q.** Okay.

11:49:53 **A.** I've already explained though why I --

11:49:56 **Q.** Okay.

11:49:56 **A.** -- figured it was Gary.

11:49:59 **Q.** Okay. So -- so in the summer of ninety-four, 1994, 11:50:16 when you saw it, at that point you were certain Gary 11:50:20 Thibodeau was the man you had seen on the news.

11:50:22 **A.** I thought we had that date figured out. It was 11:50:26 twenty-fifteen. July, twenty-fifteen.

11:50:30 **Q.** Okay, what's the date today, sir?

11:50:34 **A.** No, it had to be fourteen didn't it, yes, okay. 11:50:38 Yes, all right, I'm sorry.

11:50:40 THE COURT: That's all right.

11:50:40 **Q.** No, you're fine. But I guess what I'm wondering, in 11:50:44 1994, take yourself back to 1994, when you're looking at 11:50:49 the news --

11:50:49 **A.** Um hum.

11:50:50 **Q.** -- you were certain at that time that it was Gary 11:50:52 Thibodeau weren't you?

11:50:54 **A.** Yeah.

11:50:55 **Q.** Okay, and on July twenty-fifth of 2014, 11:51:05 approximately six months ago give or take, when you met 11:51:08 with Investigator Pietroski, you were still certain at that 11:51:11 point that Gary Thibodeau was the man you had seen at the 11:51:14 gas station.

11:51:14 **A.** I was relatively certain, yes.

11:51:17 **Q.** In your statement did you say relatively certain?

11:51:21 **A.** Probably not, because, you know, I mean really, what does it matter what I said. I said I was pretty sure it was him. I mean, you know, I admitted I wrote that, I signed that.

11:51:36 **Q.** Okay. And in that same statement you said that you saw that they had Gary Thibodeau under arrest and that's why you figured you didn't need to say anything, is that correct?

11:51:53 **A.** What are you -- what are you talking about now?

11:51:56 **Q.** Well, in 1994 --

11:51:59 **A.** Yes.

11:52:00 **Q.** -- after you saw the news article and you said to yourself that was Gary Thibodeau, you didn't come forward to the police did you?

11:52:07 **A.** No.

11:52:09 **Q.** Why not?

11:52:10 **A.** Because at that time the sheriff hadn't put anything in the paper that he wanted to know and have that -- that crime solved, and I just through that, I just figured that I'd let him know that he had the right person, that's all, to make him feel better about it. He served all these years as a law enforcement officer, he deserved to know whether he had a right or a wrong man, and at the time I

11:52:41 did believe that it was Gary Thibodeau.

11:52:44 **Q.** Mr. Pierce, after Gary Thibodeau was arrested in 1994, there continued to be news coverage about that case didn't there?

11:52:54 **A.** Yes, there was.

11:52:54 **Q.** And through 1994 and then into 1995, correct?

11:52:59 **A.** Right.

11:53:00 **Q.** And then in 1995, Gary Thibodeau's trial was going on, there continued to be news coverage.

11:53:06 **A.** Pardon? You turned away. I have hearing aids and --

11:53:09 **Q.** No, that's -- my apologies. In 1995 when Gary Thibodeau's trial was going on, there continued to be a lot of news coverage didn't there?

11:53:16 **A.** Um hum, yes, there was.

11:53:18 **Q.** Mr. Pierce, during 1994 and 1995, weren't there repeated requests in the news or in the media that if anybody had information relative to this case please come forward?

11:53:33 **A.** Only after I had gone and made this statement to Pietroski, Detective Pietroski, did I see anything in the paper about it. The time over the years there was plea for anybody that knew anything to come forward at that time.

11:53:54 **Q.** Well, in 1994 specifically, weren't there requests in the media that law enforcement was asking anybody with

11:54:02 information about that morning to come forward?

11:54:04 **A.** Um hum.

11:54:05 **Q.** But you never came forward at that time?

11:54:08 **A.** Well, I figured there was so many people that saw
11:54:12 the incident that one of them should have gone forward too,
11:54:17 and if they'd have stepped forward, I'd have stepped
11:54:20 forward. At the time, I didn't want to get involved.

11:54:25 **Q.** Okay, well, in 1995 there was a trial involving Mr.
11:54:30 Thibodeau.

11:54:31 **A.** Yes.

11:54:32 **Q.** Were you aware that there was a trial?

11:54:33 **A.** Yes, I was.

11:54:34 **Q.** And were you aware that the issue at that trial was
11:54:37 did this man actually commit this offense?

11:54:39 **A.** Yes.

11:54:40 **Q.** And at that point, weren't there still requests of
11:54:47 law enforcement that if anybody had information to come
11:54:48 forward?

11:54:50 **A.** Well, at that time I was spending a lot of time at
11:54:53 Brennan's Beach, and only from April to October after
11:55:02 those -- before April and after October would I be reading
11:55:08 newspapers and stuff like that. During the summertime I
11:55:12 didn't watch television, I didn't see the news, I didn't
11:55:16 pay attention to anything that was going on other than my
11:55:19 little world.

11:55:21 **Q.** But you were aware that there was a trial going on.
11:55:23 **A.** I was aware there was a trial of some kind going on,
11:55:27 yes.
11:55:27 **Q.** Well, not just of some kind, but involved the
11:55:30 abduction of Heidi Allen from Easter of 1994.
11:55:33 **A.** Yes, okay, yes.
11:55:36 **Q.** Okay.
11:55:36 **A.** Um hum.
11:55:37 **Q.** So is it your testimony that you didn't come forward
11:55:39 because you were vacationing at Brennan's Beach?
11:55:42 **A.** No. Because at that time I was still trying to
11:55:45 convince myself that I did not see the abduction of Heidi
11:55:49 Allen, that I saw a domestic dispute. That's what I was
11:55:55 still trying to hide my conscience behind.
11:55:58 **Q.** Okay.
11:55:59 THE COURT: Stop right there. It's time to
11:56:01 take a break for lunch. The witness has been on the
11:56:04 stand for almost forty-five minutes. We're going to
11:56:06 reconvene at one o'clock. Any objection, Ms. Peebles?
11:56:10 MS. PEEBLES: No.
11:56:11 THE COURT: Ms. Bianco?
11:56:12 MS. BIANCO: No.
11:56:13 THE COURT: Mr. Moody, Mr. Oakes?
11:56:15 MR. OAKES: That's fine, Your Honor.
11:56:16 THE COURT: Come back at one o'clock, sir.

11:56:18 THE WITNESS: Okay.

11:57:36 (Whereupon, there was a recess.)

01:01:19 MS. PEEBLES: Judge, before we call Mr. Pierce
01:01:20 back to the stand, can we have a minute with the Court?

01:01:22 THE COURT: Yes, but I want to address
01:01:23 something too on the record. There's been some issue
01:01:26 or concern that maybe some photographs are being taken
01:01:28 with cell phones. I'm not accusing anybody of
01:01:30 anything, but if the witness does not want to be video
01:01:33 taped or audio taped, there is to be no still pictures
01:01:37 either, so I'm not saying it's occurring, but if
01:01:39 anybody's thinking about doing it, don't do it. You'll
01:01:41 be thrown out. I'll ask you to leave, okay? It's a
01:01:44 consent for every type of photograph, audio or video,
01:01:50 so if they don't consent, no pictures taken with cell
01:01:53 phones. I'm not saying it's happening, but come on up.

01:02:19 (Whereupon, there was an off the record
01:03:30 discussion at the bench.)

01:03:30 THE COURT: Mr. Thibodeau, your attorney's
01:03:32 requested that you be housed at Auburn this week.

01:03:35 THE DEFENDANT: Yes, sir.

01:03:36 THE COURT: We're going to have an order
01:03:37 produced by the People and I'll sign that order with
01:03:40 the understanding, Mr. Thibodeau, the Court told you
01:03:43 last time, you change your mind, I'm not withdrawing

01:03:46 this one. I'm going to sign an order.

01:03:47 THE DEFENDANT: I understand.

01:03:48 THE COURT: You'll be transported to and from Auburn on a daily -- well, not tomorrow, but for the rest of our court appearances. Don't have your attorney ask me to keep you in Oswego from now on, okay?

01:03:58 THE DEFENDANT: Thank you. Thank you.

01:03:59 THE COURT: I'm not trying to be difficult, sir, but I'm not going to continue to withdraw my orders.

01:04:04 THE DEFENDANT: I understand. I'm sorry.

01:04:06 THE COURT: Do you want to wait for Mr. Moody or can we call a witness?

01:04:10 MR. OAKES: We can call the witness. That's fine. Thank you though.

01:04:12 THE COURT: Mr. Pierce. Mr. Oakes, do you want to make sure your mike is on please?

01:05:01 MR. OAKES: Certainly, Your Honor.

01:05:20 THE CLERK: I'm going to swear you in again, sir. Stand up. Raise your right hand, left --

WILLIAM PIERCE, Called as a witness, having been duly sworn, was examined and testified as follows:

01:05:35 THE CLERK: Please state your name for the record.

01:05:37 THE WITNESS: William F. Pierce.

01:05:39 THE CLERK: Have a seat please.

01:05:40 THE WITNESS: Thank you.

01:05:40 THE COURT: Thank you, Mr. Pierce. Mr. Oakes,
01:05:44 continue please, sir.

01:05:45 MR. OAKES: Thank you very much, Your Honor.

01:05:51 **Q.** Mr. Pierce, from where your vehicle was positioned
01:05:55 in the roadway --

01:05:56 **A.** Um hum.

01:05:56 **Q.** -- to when you saw the van, could you approximate
01:06:00 the feet or yards how far the van was from you? In feet if
01:06:07 you can.

01:06:07 **A.** Well, I'd say from here to the wall on the other
01:06:12 side of those doors, so probably say about sixty feet.

01:06:17 **Q.** About --

01:06:18 THE COURT: Can we ask for clarification? The
01:06:20 wall behind the closed doors right now?

01:06:22 THE WITNESS: Yes.

01:06:23 THE COURT: So the court officer opened up or
01:06:25 the deputy opened up those doors, that would be your
01:06:28 perspective?

01:06:29 THE WITNESS: Yes.

01:06:30 MR. OAKES: Deputy Brown, would you open up
01:06:32 those doors?

01:06:33 THE COURT: So you're making reference to the

01:06:36 front of the courthouse from where you're sitting.

01:06:39 THE WITNESS: Possibly another ten feet or so, 01:06:42 not much.

01:06:42 THE COURT: Thank you.

01:06:46 MR. OAKES: Your Honor, for the record do we 01:06:47 want to try to establish some approximation of that 01:06:51 distance? Ms. Peebles, do you have an approximation?

01:06:54 MS. PEEBLES: He said sixty feet but I don't 01:06:57 know if that's sixty feet.

01:06:59 THE COURT: I have a reference.

01:07:02 MR. OAKES: Okay, that's fine.

01:07:03 **Q.** And at the time that you first saw the driver, the 01:07:12 male, he was a male driver?

01:07:13 **A.** Yes.

01:07:13 **Q.** He was inside of the vehicle?

01:07:15 **A.** That's correct.

01:07:16 **Q.** Okay, and how long did you see him sitting inside of 01:07:21 the vehicle?

01:07:21 **A.** Possibly twenty seconds possibly.

01:07:31 **Q.** Okay.

01:07:32 **A.** At the most, at the longest.

01:07:35 **Q.** At the lowest you said?

01:07:36 **A.** Pardon?

01:07:37 **Q.** Did you say at the lowest twenty-seconds or longest?

01:07:40 **A.** At the highest.

01:07:41 THE COURT: The highest.

01:07:42 **A.** At the longest amount of time.

01:07:45 **Q.** Okay, so I mean it could have been much shorter than
01:07:49 that ten seconds maybe?

01:07:51 **A.** It could have been.

01:07:52 **Q.** Okay.

01:07:53 **A.** It wouldn't have exceeded twenty.

01:07:55 **Q.** And would it be fair to say that because he was
01:07:57 inside of the vehicle -- well, the female was outside of
01:08:02 the vehicle talking with him, correct?

01:08:03 **A.** Yes.

01:08:03 **Q.** So while he was inside of the vehicle, you didn't
01:08:07 have a clear view of him from where you were?

01:08:10 **A.** I had a very clear view of him.

01:08:12 **Q.** You did?

01:08:12 **A.** At all times.

01:08:15 **Q.** And when he got out of the vehicle, you said he
01:08:18 quickly moved around the front of the van to the point
01:08:21 where he struck her?

01:08:23 **A.** Yes.

01:08:23 **Q.** How long did it take him to get out of the van and
01:08:27 kind of come around the front, three seconds, four seconds?

01:08:29 **A.** I'm not in any position to gauge that amount of
01:08:32 time.

01:08:32 **Q.** Okay.

01:08:32 **A.** Because it was fast enough that -- it was fast enough but slow enough. Probably in actual time it might have been three seconds.

01:08:42 **Q.** Okay.

01:08:42 **A.** But in the way I saw it, it could have been thirty seconds for him to get from the door to her. All's I saw was something that enraged me when he hit her.

Q. Okay.

(People's Exhibit YY was marked for identification).

(People's Exhibit ZZ was marked for identification).

01:08:55 MR. OAKES: Your Honor, may I approach the witness?

01:09:02 THE COURT: Yes.

01:09:05 **Q.** Mr. Pierce, I'm going to show you first what's been marked for identification as Exhibit YY.

01:09:12 **A.** Okay.

01:09:12 **Q.** Do you generally recognize what's shown in that photograph, sir?

01:09:15 **A.** Yes.

01:09:19 **Q.** Okay, is that the D&W?

01:09:22 THE COURT: Is somebody's computer and their phone beeping and/or making noise because if it is, turn it off please. Thank you.

01:09:30 THE WITNESS: I had my phone running.

01:09:32 THE COURT: No, it wasn't you.

01:09:35 THE WITNESS: There.

01:09:36 **Q.** All set, okay. Mr. Pierce, this exhibit that we're looking at, YY.

01:09:44 **A.** Yeah.

01:09:44 **Q.** Does that fairly and accurately show the layout of the D&W on that morning?

01:09:51 **A.** Yes, yes.

01:09:51 **Q.** And I'm also going to show you what's been marked for identification as Exhibit ZZ.

01:09:56 **A.** Okay.

01:09:56 **Q.** Does that also show -- accurately show the layout of the D&W, the store, the pumps on that morning?

01:10:06 **A.** I'd -- I'd have to say yes, you know.

01:10:14 **Q.** Okay.

01:10:15 **A.** 'Cause it's so close that it's really no difference.

01:10:21 **Q.** Okay, the two photographs are basically the same location taken from a different angle?

01:10:26 **A.** Right, yeah.

01:10:27 MR. OAKES: Your Honor, based upon the witness's testimony, I'd like to offer Exhibits YY and ZZ.

01:10:33 MS. PEEBLES: No objection.

01:10:34 THE COURT: Both YY and ZZ are in without

01:10:37 objection.

(People's Exhibit YY was received in
evidence).

(People's Exhibit ZZ was received in
01:10:37 evidence).

01:10:37 **Q.** Okay, and what I'm going to ask you to do, Mr.
01:10:40 Pierce, is on Exhibit ZZ, I'm going to hand this to you.
01:10:48 Now if you could please, sir, I'm going to hand you a red
01:10:51 pen or marker.

01:10:52 **A.** Okay.

01:10:52 **Q.** Can you please put an X where your van was when
01:10:55 you -- when you saw -- where your vehicle was when you saw
01:10:59 the van?

01:10:59 **A.** Yes, right there.

01:11:07 **Q.** And for the record, the witness has made a mark in
01:11:11 red ink, and Mr. Pierce, I'm going to ask you, I'm now
01:11:16 going to hand you a blue marker.

01:11:17 **A.** Could have been a little bit back farther.

01:11:19 **Q.** Could have been a little bit back further?

01:11:22 **A.** A little bit, yeah.

01:11:25 **Q.** Do you think that red X is maybe off a little bit?

01:11:26 **A.** Yeah, higher up. It could have been lower because
01:11:30 if I'd have been just a little bit more, I could have
01:11:33 turned into there, but I was far enough ahead where I
01:11:36 couldn't turn in, okay.

01:11:39 **Q.** So if you think that red X is off a mark, what I'm going to do is hand you --

01:11:43 **A.** Maybe a car length in actual.

01:11:45 **Q.** What I'll do then is I'll hand you the blue marker.

01:11:48 **A.** Okay.

01:11:49 **Q.** Put an X where you think you were with that blue marker please.

01:11:53 **A.** Okay.

01:12:02 **Q.** Now and what I'm also going to do, Mr. Pierce, is hand you a green marker. Can you please put an X where the van was that you saw, that you described to the Court?

01:12:18 **A.** (Indicating).

01:12:24 **Q.** Okay. Thank you, Mr. Pierce.

01:12:36 MR. OAKES: Your Honor, may I publish this?

01:12:39 THE COURT: Sure.

01:12:40 MR. OAKES: Thank you.

01:13:18 (Whereupon, the exhibit was published).

01:13:18 **Q.** Mr. Pierce, can you see where I'm pointing with my finger?

01:13:22 **A.** Yep.

01:13:23 **Q.** It's this blue mark here is where your van was?

01:13:25 **A.** Just about, yes.

01:13:26 **Q.** Or where your vehicle was, sorry. And this green mark over here, this X is where the van was that you saw?

01:13:33 **A.** Right, where the white van was, yes.

01:13:36 **Q.** Okay, now looking at that photograph --
01:13:39 **A.** Pardon?
01:13:39 **Q.** Looking at that photograph and looking at the
01:13:42 distance shown in that photograph, do you still think you
01:13:45 were sixty feet away or must have been a little further?
01:13:53 **A.** I'm not going to -- I'm not going to approximate
01:13:56 because I don't know how big that island is. I had no idea
01:14:02 in length how big that island is, and that would shorten or
01:14:06 lengthen the amount of feet, but I still -- I still feel
01:14:13 that I was close enough to the van that I saw everything as
01:14:20 it was going on and as it was happening in full detail.
01:14:26 **Q.** Mr. Pierce, again, you said you were a little bit
01:14:29 ahead of this driveway here, the 104 side?
01:14:32 **A.** That's right.
01:14:33 **Q.** So you couldn't turn in. Now this here what I'm
01:14:37 pointing to right now, that's the entrance on the 104B
01:14:39 side, correct?
01:14:40 **A.** That's correct, yes.
01:14:41 **Q.** You would agree that's a pretty wide entranceway?
01:14:45 **A.** Not when you got a slippery road trying to turn into
01:14:48 it with cars coming, no, it's not very wide.
01:14:52 **Q.** Well, from making a turn from a standstill, you made
01:14:57 the turn, how much speed did you pick up? How fast were
01:15:00 you going?
01:15:01 **A.** Enough speed that you're going to slide on slippery

01:15:06 pavement I can guarantee you because I did try to stop and
01:15:09 I did slide beyond the turning point into that driveway.

01:15:14 **Q.** Okay.

01:15:24 THE COURT: Mr. Oakes, just so I'm clear, the
01:15:26 blue X was his van, the green X was the van getting --
01:15:31 at the D&W. What is the red X for?

01:15:33 MR. OAKES: The red was where he initially
01:15:36 marked his vehicle as being --

01:15:37 THE COURT: So red and blue. Blue has been
01:15:39 substituted for red.

01:15:40 MR. OAKES: Correct.

01:15:41 **Q.** And again, Mr. Pierce, I -- I think I mistakenly
01:15:44 called your vehicle a van. What kind of vehicle were you
01:15:47 driving?

01:15:47 **A.** I was driving a gray eighty-nine Safari van.

01:15:50 **Q.** You were in a van too?

01:15:52 **A.** I was in a van, yes.

01:15:54 **Q.** Okay. So the blue mark is the correction as to
01:15:59 where you actually were, and the green mark is where the
01:16:01 van that you saw was.

01:16:02 **A.** I'm -- that's pretty close.

01:16:04 **Q.** Okay. Now, Mr. Pierce --

01:16:20 **A.** I didn't mean to hide behind her.

01:16:23 **Q.** No, you're fine. You said at the time back in 1994
01:16:27 that summer you weren't really reading the Palladium Times

01:16:32 at that point, the Pal Times?

01:16:32 **A.** No, I wasn't.

01:16:33 **Q.** You would read the Post-Standard I think you said
01:16:35 out of Syracuse?

01:16:37 **A.** Yes, and Oswego Valley.

01:16:38 **Q.** Oswego Valley.

01:16:39 **A.** Yeah.

01:16:39 **Q.** Did you ever get -- back in those days, the
01:16:41 Post-Standard used to come out I think in the morning, and
01:16:44 they had the Herald American that came out in the
01:16:47 afternoon.

01:16:47 **A.** Right, the Herald Journal, yes.

01:16:49 **Q.** Did you get both of those or did you see those?

01:16:52 **A.** I used to get -- when the Herald Journal was being
01:16:54 printed and being distributed, I always got the Herald
01:16:58 Journal because I liked the evening news.

01:17:00 **Q.** Catch up on what happened that day, correct?

01:17:02 **A.** That's right.

01:17:03 **Q.** Now, when you saw Mr. Thibodeau's picture in the
01:17:07 Post-Standard or the Herald, what was his appearance?

01:17:11 **A.** What was his appearance?

01:17:12 **Q.** Yes.

01:17:15 **A.** Well, his appearance to me at the time was -- I
01:17:21 thought he was as disguised as possible, and the fact that
01:17:26 that mustache that he wore, I thought it was silly.

01:17:31 **Q.** Okay.

01:17:31 **A.** You know, I thought it was a pretty silly thing for a grown man to be harvesting a mustache like that.

01:17:40 **Q.** To your recollection as you sit here right now, do you recall him having a beard or goatee?

01:17:45 **A.** No. I never saw him with a beard until the pictures you gave me this morning.

01:17:52 **Q.** Okay, well, Mr. Pierce --

01:17:55 MR. OAKES: May I approach, Your Honor?

01:17:56 THE COURT: Sure.

(People's Exhibit AAA was marked for identification).

01:18:01 **Q.** Mr. Pierce, I'm going to show you what's been marked for identification as AAA.

01:18:08 **A.** Yep.

01:18:08 **Q.** A copy of the Post-Standard from Tuesday, July twenty-six, 1994.

01:18:13 **A.** Um hum.

01:18:14 **Q.** All right, I'm going to ask you to look at the front page on the bottom section, sir.

01:18:21 **A.** Yes, that's the picture you showed me, close to it.

01:18:24 **Q.** Okay.

01:18:25 **A.** Picture you showed me of Thibodeau.

01:18:27 **Q.** Was that an accurate picture of the way Gary Thibodeau was portrayed in that Post-Standard at that time?

01:18:33 MS. PEEBLES: Objection.

01:18:34 **A.** In this Post-Standard, yes.

01:18:36 THE COURT: Hold on. What's your objection?

01:18:37 MS. PEEBLES: Is that an accurate depiction of how Gary Thibodeau was portrayed. The photograph speaks for itself.

01:18:45 THE COURT: Any objection to the paper moving in?

01:18:47 MS. PEEBLES: I have no objection to the news -- any newspaper article he wants to introduce I don't object.

01:18:52 MR. OAKES: Okay. Thank you, Your Honor. Your Honor, then in that case the People would offer Exhibit AAA which is the Post-Standard from Tuesday July twenty-six, 1994.

01:19:03 THE COURT: AAA is in without objection.

01:19:06 MR. OAKES: The People offer --

01:19:08 MS. PEEBLES: Judge, I don't object, but this witness basically said he didn't read the Post-Standard, he read the Herald American, and he is introducing the Post-Standard versions of the paper.

01:19:16 THE COURT: He did say he read the Post-Standard, the Herald Journal, but if you move AAA in, there is no objection to that.

(People's Exhibit AAA was received in

evidence).

(People's Exhibit BBB was marked for identification).

01:19:25 THE COURT: What's the next one?

01:19:26 MR. OAKES: People's Exhibit BBB which is the 01:19:29 Harold Journal also from Tuesday, July twenty-six, 01:19:33 1994.

01:19:33 THE COURT: Would you like to see those?

01:19:35 MS. PEEBLES: I took a look at them. No 01:19:38 objection.

01:19:38 THE COURT: BBB is in without objection.

(People's Exhibit BBB was received in evidence).

(People's Exhibit CCC was marked for 01:19:40 identification).

01:19:40 MR. OAKES: And CCC is from July twenty-fourth 01:19:43 of 1994. It's the Herald American, Your Honor.

01:19:46 THE COURT: Again, Ms. Peebles, in without 01:19:49 objection?

01:19:50 MS. PEEBLES: No objection, Judge.

01:19:51 THE COURT: Thank you.

(People's Exhibit CCC was received in 01:19:54 evidence).

01:19:54 **Q.** And I guess starting first in time, Mr. Pierce, 01:19:57 again, Exhibit CCC from July twenty-fourth 1994, is that

01:20:04 picture of Gary Thibodeau on that?
01:20:06 **A.** Yes, I do.
01:20:07 **Q.** And what type of facial hair does he have in that
01:20:10 photograph, sir?
01:20:11 **A.** He has a type of a goatee.
01:20:14 **Q.** Okay, he has a mustache, and let me ask you, does he
01:20:21 also have hair along his chin line?
01:20:23 **A.** Yeah. It's standard goatee of that time, at that
01:20:28 time.
01:20:28 **Q.** Okay.
01:20:30 **A.** But if you are asking me did I see these pictures at
01:20:34 the time? And I'll tell you no because I made -- I've told
01:20:40 you earlier that during the summer I very seldom kept up
01:20:44 with the news or read the paper.
01:21:05 **Q.** Mr. Pierce, in October of 2014, you met with
01:21:20 Investigator Pietroski of the Sheriff's Department?
01:21:23 **A.** Yes, I did.
01:21:24 **Q.** And he showed you a photo array at that time didn't
01:21:28 he?
01:21:28 **A.** Pardon?
01:21:28 **Q.** He showed you a photo array at that time?
01:21:30 **A.** No.
01:21:32 **Q.** In October of 2014?
01:21:37 **A.** In October, yes, but okay, yes.
01:21:39 **Q.** Because just to establish the timeline again, you

01:21:45 met with him initially on July twenty-fifth of 2014.

01:21:48 **A.** Um hum.

01:21:49 **Q.** And at that point you thought it was Gary Thibodeau
01:21:51 you saw at the --

01:21:52 **A.** Um hum.

01:21:53 **Q.** And then after that, you saw news reports and media
01:21:59 accounts, and then you changed your opinion and said you
01:22:03 thought it was James Steen.

01:22:04 **A.** I called Detective Pietroski and I told him that I'm
01:22:13 not so sure that Thibodeau did it, I -- from a picture that
01:22:17 I saw in the Post-Standard, and right off quick he more or
01:22:25 less pooh poohed me and dismissed me, and then he came
01:22:30 later with the photo array, and at that time, with that
01:22:37 photo array, I told him if he had a picture of Thibodeau
01:22:44 when he was arrested and arranged at that time, which he
01:22:48 failed to produce to me, I could identify beyond a shadow
01:22:53 of a doubt and he -- he refused to -- he just ignored me
01:22:58 and didn't give it to me.

01:22:59 **Q.** Okay, well, Mr. Pierce, you called Investigator
01:23:06 Pietroski, you said the time that he I think your words
01:23:09 were pooh poohed you, because at that point you said you
01:23:12 thought it was James Steen, by telephone?

01:23:15 **A.** Yes. I said -- told him I was pretty sure that's
01:23:19 who it was.

01:23:20 **Q.** Would you agree that pretty sure is different than

01:23:25 being certain about something?
01:23:26 **A.** Pardon?
01:23:26 **Q.** Would you agree that being pretty sure about
01:23:29 something is different than being certain about something?
01:23:31 **A.** Well, after I had said that Gary was the one that
01:23:38 did it, and I realized that I had made a terrible mistake
01:23:44 when I saw the picture of Steen in the newspaper, I knew I
01:23:49 had made a mistake and that I was going to rectify it as
01:23:54 soon as I possibly could.
01:23:56 **Q.** And the photograph that you saw of James Steen in
01:23:59 the paper showed him essentially in a lineup with numbers
01:24:03 behind him showing his height?
01:24:05 **A.** No.
01:24:06 **Q.** No?
01:24:06 **A.** I didn't see any -- any -- I didn't see any
01:24:08 measurements behind any of the pictures. If they were
01:24:12 there I didn't see 'em.
01:24:15 **Q.** Well, Exhibit No. 138 that Ms. Peebles showed you
01:24:19 earlier, when was the first time you saw this photograph?
01:24:22 **A.** It was in the Post-Standard about ten days to two
01:24:27 weeks after I had made that statement to Detective
01:24:33 Pietroski.
01:24:33 **Q.** After which statement?
01:24:35 **A.** The statement that I read this morning that you and
01:24:38 I went over.

01:24:39 **Q.** Okay, so you gave the written statement.
01:24:43 **A.** Right, the written statement, right.
01:24:46 **Q.** And then a week to ten days later you saw this photograph?
01:24:49 **A.** Right.
01:24:50 **Q.** 138.
01:24:51 **A.** Right.
01:24:52 **Q.** And based on seeing this photograph is why you called Investigator Pietroski back?
01:24:56 **A.** That's exactly right.
01:24:58 **Q.** Okay, I just want to be clear. So and again, in this photograph Mr. Steen has a full beard, mustache?
01:25:06 **A.** That's correct.
01:25:07 **Q.** And he also appears in basically an inmate outfit, would you agree with that?
01:25:11 **A.** It doesn't matter what he appears in.
01:25:13 **Q.** Okay.
01:25:14 **A.** His face is the one that I saw.
01:25:17 **Q.** Well, do you know when this photograph was taken of Mr. Steen?
01:25:21 **A.** Pardon?
01:25:21 **Q.** Do you know when this photograph was taken of Mr. Steen?
01:25:24 **A.** I have no idea and it -- I don't think it -- it makes much difference.

01:25:29 **Q.** Well --

01:25:30 **A.** When it was taken or anything. That's the picture of the guy that I saw hit the woman at the gas station.

01:25:38 **Q.** Well, Mr. Pierce, would you agree that people's appearances change over time?

01:25:43 **A.** Pardon?

01:25:44 **Q.** Would you agree that people's appearances change over time?

01:25:48 **A.** Yes. A lot of my friends don't look like they used to and apparently I don't look like I used to.

01:25:54 **Q.** And neither do I. Would you agree that people gain weight or lose weight over a period of sixteen to twenty years?

01:26:02 **A.** I -- I have to say yes.

01:26:04 **Q.** Okay, and sometimes they change their facial hair.

01:26:07 **A.** Yes.

01:26:08 **Q.** They could go from not having a beard to twenty years later they have a beard.

01:26:13 **A.** Yep.

01:26:15 **Q.** Let me ask you, Mr. Pierce, in looking at -- deciding whether James Steen was involved with this, do you think it would be more useful to you to look at a photograph that was taken a few years ago or a photograph that was taken closer to 1994?

01:26:38 **A.** I -- I don't believe it would make any difference

01:26:43 because how -- how -- a person with a beard, unless it's gray and white streaked, his age is relatively undetectable to be precise. I can never recognize a person age by his face with a full beard. I have a brother that's a good demonstration of that, and he's eight years younger than I am.

01:27:17 **Q.** Okay. Well, Mr. Pierce, in October of 2014, Investigator Pietroski showed you two different photo arrays didn't he?

01:27:30 **A.** Pardon?

01:27:31 **Q.** Investigator Pietroski showed you two different sets of photos didn't he?

01:27:37 **A.** Two pages of photos with six photos on each page, yes.

01:27:44 **Q.** And it's your testimony that Investigator Pietroski refused to show you a photograph of Gary Thibodeau around the time of his arrest in 1994?

01:27:57 **A.** A picture of him when he was arrested. Did he have a full beard? Or didn't he. That's -- I said that will tell you who did it and who didn't do it. I said if Gary Thibodeau did not have a full beard when he was arrested, he's not the person that did it. I said I'll guarantee you that a hundred thousand percent.

(People's Exhibit DDD was marked for identification). 01:28:21

01:28:21 MR. OAKES: Okay, Your Honor, may I approach the witness?

01:28:23 THE COURT: Yes.

01:28:25 **Q.** Mr. Pierce, I'm going to show you what's been marked 01:28:28 for identification as DDD.

01:28:30 **A.** Okay.

01:28:30 **Q.** Do you recognize this, sir?

01:28:34 **A.** I recognize, yeah, pretty much.

01:28:39 **Q.** Was that one of the two photo arrays that 01:28:41 Investigator Pietroski showed you in October of 2014?

01:28:46 **A.** I'd say so.

01:28:48 **Q.** And when you were shown that photo array, you didn't 01:28:50 recognize anybody in that photo.

01:28:52 **A.** I don't know any of them. How should I recognize 01:28:55 them?

01:28:55 **Q.** Okay. Well, you didn't recognize any of those 01:28:58 people as being the male in the van did you?

01:29:00 **A.** Not at all.

01:29:01 **Q.** Okay. Now do you realize that Mr. Steen is in 01:29:05 position number three in that photo array?

01:29:08 **A.** I wouldn't say that was Mr. Steen that I know. 01:29:17 That's the Steen that I know (indicating).

01:29:19 **Q.** Number -- Exhibit 138 is the Steen that you know.

01:29:21 **A.** Um hum. That's the one that I know. Those are two 01:29:27 different people as far as I can see.

01:29:29 MR. OAKES: Okay. Your Honor, may I approach the witness again?

01:29:36 THE COURT: Excuse me?

01:29:37 MR. OAKES: May I approach the witness?

01:29:38 THE COURT: Sure.

01:29:39 **Q.** Mr. Pierce, you said the person in number three in Exhibit DDD is a different person than the person in Exhibit 138.

01:29:46 MS. PEEBLES: Your Honor, I'm going to object. Asked and answered.

01:29:49 THE COURT: We don't know the question. Ask the question. I'm going to overrule it until I hear the question.

01:29:55 **Q.** You said those were two different people? I'm going to ask you to look at --

01:29:58 **A.** To me they look two different people. This is the one that I saw at the gas station. This guy I've never saw in my life.

01:30:07 **Q.** Okay.

01:30:08 **A.** Okay?

01:30:13 **Q.** And Exhibit DDD, that's again, you recognize this as being the same photographic array you were shown by Investigator Pietroski?

01:30:23 **A.** It looks it. It looks pretty much -- pretty much, yes.

01:30:27 MR. OAKES: Your Honor, the People would offer
01:30:31 Exhibit DDD.

01:30:32 MS. PEEBLES: I have no objection.

01:30:33 THE COURT: DDD is in without objection.

(People's Exhibit DDD was received in evidence).

(People's Exhibit EEE was marked for
01:30:45 identification).

01:30:45 **Q.** Mr. Pierce, your testimony is that Investigator
01:30:49 Pietroski showed you a photo array of Gary Thibodeau
01:30:53 without Gary having a beard or facial hair?

01:30:55 **A.** Yes. Any pictures that I saw of Mr. Thibodeau there
01:31:01 was no full beard on any of 'em at any time.

01:31:05 **Q.** Well, Mr. Pierce, I'm going to hand you what's been
01:31:10 marked for identification as EEE.

01:31:13 **A.** Yeah.

01:31:14 **Q.** Do you recognize that, sir?

01:31:15 **A.** No.

01:31:17 **Q.** You don't recognize that as being the photo array
01:31:21 that Investigator Pietroski showed you?

01:31:23 **A.** Some of these people have similar features, but as
01:31:25 far as identifying any of them, no.

01:31:28 **Q.** Well, I'm not asking you to identify any of them.
01:31:31 What I'm asking you is the object you're holding with the
01:31:33 six photos in it.

01:31:35 **A.** Yes.

01:31:35 **Q.** Isn't that the same photo array the investigator showed you in October?

01:31:38 **A.** I think so, yes, yeah, I think it is. It looks similar.

01:31:43 **Q.** Okay.

01:31:43 **A.** 'Cause I remember these beards on here.

01:31:48 **Q.** Okay, so you believe -- it's your testimony this is the photo array that was shown you in October?

01:31:53 **A.** Yeah.

01:31:53 **Q.** 2014?

01:31:54 **A.** Yeah.

01:31:55 MR. OAKES: Your Honor, the People would offer Exhibit EEE.

01:31:57 THE COURT: Have you seen it?

01:31:59 MS. PEEBLES: I have no objection.

01:32:00 THE COURT: In without objection.

(People's Exhibit EEE was received in evidence).

01:32:04 01:32:04 **Q.** Mr. Pierce, do you realize that Exhibit No. 5 --

01:32:06 MS. PEEBLES: I'm going to object to the testimony of Mr. Oakes.

01:32:10 THE COURT: You can lead him, but I know what you're going for. Just point it out more subtlely.

01:32:16 MR. OAKES: Thank you.

01:32:18 **Q.** Do you recognize the person in Exhibit No. 5, in
01:32:20 photo number five, photo position number five?

01:32:23 **A.** It looks similar to Mr. Thibodeau.

01:32:26 **Q.** Okay, can you tell us whether it is Mr. Thibodeau?

01:32:30 **A.** No, I can't.

01:32:32 **Q.** Do you know when that photograph was taken of Mr.
01:32:37 Thibodeau?

01:32:38 **A.** Don't have any idea.

01:32:40 **Q.** Let me ask you, that picture of Mr. Thibodeau,
01:32:43 number five --

01:32:43 **A.** Um hum.

01:32:44 **Q.** -- does that look like the gentleman that's sitting
01:32:46 at the table over there?

01:32:47 **A.** No.

01:32:48 **Q.** So would you agree people's appearances change over
01:32:50 the years?

01:32:52 **A.** I did this morning.

01:32:54 MS. PEEBLES: I object to Mr. Oakes
01:32:56 testifying.

01:32:56 THE COURT: I'm going to allow the question.
01:32:57 That's fine.

01:32:58 **A.** I did this morning.

01:32:59 **Q.** Okay, so would it be fair to say -- would it be fair
01:33:03 to say that James Steen's appearance may have changed over
01:33:08 the years from 1994 to present?

01:33:09 **A.** James Steen picture that I see was the man that I
01:33:15 saw. Now we can play games with faces and features, but it
01:33:23 still remains the fact that the man that I saw was James
01:33:27 Steen according to your identification.

01:33:30 **Q.** Okay, and are you as certain of that identification
01:33:34 as you were of your identification of Gary Thibodeau on
01:33:37 July twenty-fifth of 2014?

01:33:39 MS. PEEBLES: Objection.

01:33:40 THE COURT: Sustained. It's before me. It's
01:33:52 already been --

01:33:53 MR. OAKES: Okay, that's fine.

01:34:18 MR. OAKES: Your Honor, I have no further
01:34:19 questions for Mr. Pierce.

01:34:22 THE COURT: Ms. Peebles?

01:34:24 MS. PEEBLES: Yes.

01:34:31 REDIRECT EXAMINATION
01:34:31 BY MS. PEEBLES:

01:34:32 **Q.** Mr. Pierce, when you were talking with Investigator
01:34:36 Pietroski, were you ever shown a photograph of any vans?

01:34:41 **A.** No.

01:34:41 **Q.** And --

01:34:42 MR. OAKES: Objection, Your Honor. Beyond the
01:34:44 scope of cross.

01:34:45 THE COURT: You asked about photographs. I'll
01:34:46 allow it.

01:34:48 **Q.** Your answer is no?

01:34:51 **A.** Yes. No.

01:34:52 **Q.** And I showed you Defendant's Exhibit 132.

01:34:58 **A.** Yes.

01:34:58 **Q.** On your direct?

01:34:59 **A.** Yes, you did. Yes.

01:35:01 **Q.** And it's your testimony that that was not the van
01:35:04 that you saw that morning.

01:35:05 **A.** That's correct.

01:35:06 **Q.** Now, you were shown a photograph which has been
01:35:12 received into evidence Exhibit 120 -- or Exhibit ZZ and XX.
01:35:25 Did you see them? I'm going to hand you these back.

01:35:28 **A.** Yes.

01:35:28 **Q.** Have you take a look. Now where you put that X, is
01:35:32 that the third pump that you were referring to when you
01:35:35 were being cross-examined by Mr. Oakes?

01:35:37 **A.** Yes.

01:35:37 **Q.** So there was a third pump there, that that's where
01:35:41 you saw that van.

01:35:41 **A.** Yes.

01:35:41 **Q.** And you remember that that's where you saw the white
01:35:44 rusty van.

01:35:44 **A.** That's right.

01:35:46 **Q.** Can you please describe the physique of the
01:35:49 individual that you saw get out of the driver's seat of the

01:35:51 van and hit the girl in the back of the head?

01:35:55 **A.** Pardon?

01:35:55 **Q.** The build, how -- how -- what type of build?

01:35:58 **A.** He was built like me.

01:36:00 **Q.** And how would you describe yourself?

01:36:03 **A.** Well, I'm only five-seven and a half and I weigh 01:36:10 two-fifty.

01:36:11 **Q.** How much did the person roughly, I know it's hard to 01:36:14 guess, but how -- how husky was the person that you saw get 01:36:18 out of the van?

01:36:18 **A.** About as husky as I am if not a little -- well, I'd 01:36:24 say about the same.

01:36:25 **Q.** Now, did you have a cell phone back in 1994 when you 01:36:30 were driving by the D&W on that Easter morning?

01:36:33 **A.** No, no.

01:36:34 **Q.** Did you tell anyone else what you saw Easter morning 01:36:39 of April fourth, or April of 1994, anyone in your family?

01:36:45 **A.** No.

01:36:47 **Q.** Did you tell your companion?

01:36:50 **A.** Not at that time, I told no one.

01:36:52 **Q.** Did there come a point in time that you did tell one 01:36:56 of your family members about what you saw?

01:36:58 **A.** Yes.

01:36:58 **Q.** And who was that?

01:36:59 **A.** Well, my companion, Helen, I told her about it.

01:37:07 **Q.** When did you tell Helen?

01:37:11 **A.** Well, when I saw the picture of the snow-covered gas station, and it was on the TV, and we were sitting watching the evening news, and one of the -- one of the news channels had the picture of that station at the time that I was there that I saw what I did.

01:37:38 **Q.** Okay, so back in 1994 you actually told Helen what you saw that morning.

01:37:44 **A.** Not in ninety-four, no.

01:37:46 **Q.** What year was it when you told Helen?

01:37:48 **A.** I can't say.

01:37:49 **Q.** Did you ever make comments about it when you were driving by the D&W on your way to Brennan Beach?

01:37:56 **A.** Quite often, yes. When something bothers you, you know, and you feel a little bit ashamed of yourself for not digging into a further situation like I did 'cause I'm a pretty proud individual, and I decided that I'd go on, and that was a decision that I made that I had to live with, and it wasn't easy, and I didn't converse with anyone about what I saw and -- because at that time I think, I don't know why, but I was ashamed of myself for not diving into it deeper.

01:38:51 **Q.** Thank you, Mr. Pierce.

01:38:51 MS. PEEBLES: No further questions.

01:38:52 THE COURT: Mr. Oakes?

01:38:56 RECROSS-EXAMINATION
01:38:57 BY MR. OAKES:
01:38:58 **Q.** Your companion Helen, you were with her?
01:39:20 **A.** Yes.
01:39:21 **Q.** You were with her back in 1994?
01:39:23 **A.** Yes.
01:39:23 **Q.** And you never told her about the incident that day?
01:39:27 **A.** No, no. We were just -- she lived upstairs in this
01:39:33 rental apartment and I lived downstairs.
01:39:38 **Q.** Why -- why was it that you didn't tell her that day
01:39:42 or a couple weeks after you saw it?
01:39:45 **A.** Because at that time we were just acquaintances and
01:39:50 friends.
01:39:52 **Q.** Do you have any children?
01:39:55 **A.** I have two children by my first marriage that were
01:39:59 adopted, yes.
01:40:00 **Q.** Did you tell them or you didn't tell anybody about
01:40:03 what you saw?
01:40:04 **A.** I did not tell anyone. When you're ashamed of
01:40:08 something that you did or you didn't do, do you go around
01:40:12 telling everybody?
01:40:14 **Q.** Well --
01:40:16 **A.** I don't.
01:40:16 **Q.** Mr. Pierce, at the time -- at the time that you saw
01:40:22 the incident, you just thought it was a domestic dispute,

01:40:26 correct?

01:40:26 **A.** That is correct, yes.

01:40:27 **Q.** So at what point did you make the connection that it might have been Heidi Allen?

01:40:33 **A.** When?

01:40:34 **Q.** Yeah.

01:40:35 **A.** When I heard that she'd been abducted.

01:40:38 **Q.** When was that?

01:40:41 **A.** Probably two, three days later.

01:40:47 **Q.** So --

01:40:47 **A.** But I -- I still wasn't positive that that's what took place that I saw.

01:40:52 **Q.** So in the first two or three days after then.

01:40:56 **A.** Um hum.

01:40:56 **Q.** You thought it might have been Heidi Allen that you had seen being kidnapped.

01:41:00 **A.** Yes. What was -- I answered too quickly. What was that you actually said?

01:41:11 **Q.** So within two or three days of witnessing this incident, you thought it might have been Heidi Allen that you saw being kidnapped.

01:41:18 **A.** I was beginning to think that that's exactly what I saw.

01:41:21 THE COURT: Mr. Oakes, this is beyond the scope of redirect.

01:41:24 MR. OAKES: Okay. I have no further questions, Your Honor.

01:41:37 THE COURT: Anything?

01:41:39 MS. PEEBLES: No, Your Honor.

01:41:39 THE COURT: Mr. Pierce, you can step down. Thank you for your time, sir.

01:41:42 THE WITNESS: Yes.

01:41:43 THE COURT: Next witness? Who is it going to be?

01:41:51 MS. PEEBLES: Ron Clark.

01:41:53 MR. MOODY: Judge, can we approach for one second?

01:41:55 THE COURT: Sure.

01:42:16 (Whereupon, there was an off the record discussion at the bench).

01:43:37 THE CLERK: Stand up please. Raise your right hand.

01:43:42 RONALD CLARKE, Called as a witness, having been duly sworn, was examined and testified as follows:

01:43:44 THE CLERK: Please state your name for the record.

01:43:50 THE WITNESS: Ronald Clark.

01:43:51 THE CLERK: Spell your last name.

01:43:52 THE WITNESS: C-L-A-R-K-E.

01:43:56 THE CLERK: Have a seat please.

01:43:58 THE COURT: Mr. Clark, before you start your
01:43:59 testimony, I'm going to ask you whether or not you
01:44:01 consent to have your testimony audio taped and video
01:44:04 taped.

01:44:05 THE WITNESS: It doesn't matter.

01:44:06 THE COURT: I know, but I need a yes you will
01:44:08 agree or no you don't want it to happen.

01:44:10 THE WITNESS: Yes, I agree.

01:44:12 THE COURT: Okay, thank you.

01:44:15 DIRECT EXAMINATION

BY MS. PEEBLES:

01:44:16 **Q.** Mr. Clarke, how old are you?

01:44:19 **A.** Fifty-three.

01:44:19 **Q.** Are you married?

01:44:21 **A.** No.

01:44:21 **Q.** Do you have any children?

01:44:22 **A.** Yes, I do.

01:44:23 **Q.** Are you currently living in Oswego County?

01:44:27 **A.** Yes, I am.

01:44:28 **Q.** And how long have you lived in Oswego County?

01:44:30 **A.** Since I was four years old.

01:44:33 **Q.** And what do you do for a living?

01:44:36 **A.** Build houses. All kinds of things. Thunder Island
01:44:42 Water Slide, different things like that.

01:44:44 **Q.** Do you own your own business or do you work for

01:44:46 anyone in particular?

01:44:47 **A.** I own my own.

01:44:48 **Q.** Is that a family-run business where your -- who --
01:44:52 do you employ anybody, I guess that's --

01:44:54 **A.** My father owned the business building homes and I
01:44:58 continued on.

01:45:00 **Q.** And you have been doing that for how long?

01:45:05 **A.** Since I could. Since four years old.

01:45:08 **Q.** Do you know an individual by the name of James
01:45:12 Steen?

01:45:12 **A.** Yes, I do.

01:45:13 **Q.** How long have you known James Steen?

01:45:15 **A.** Probably thirty-five years maybe.

01:45:26 **Q.** Do you remember when you met him for the first time?

01:45:30 **A.** Yes, I do.

01:45:31 **Q.** When was that?

01:45:32 **A.** I say yes, I do, but for the first time I believe
01:45:35 was in the Palermo church.

01:45:38 **Q.** And how old were you at that time?

01:45:39 **A.** I can't really tell you that.

01:45:42 **Q.** How often did you have contact with Mr. Steen?

01:45:49 **A.** Maybe twenty times through life.

01:45:54 **Q.** And describe the nature of the relationship you had
01:45:58 with Mr. Steen.

01:45:59 **A.** I guess it started his mother was a hairdresser and

01:46:07 cut a lot of our hair so, you know, he was a little boy
01:46:11 playing in the front yard, at the time he was younger than
01:46:14 me by probably eight to ten years. From there he
01:46:21 occasionally would come around and ask if we could give him
01:46:24 a day's work here or there and, you know, just for a couple
01:46:29 extra dollars, so my dad would let him work here and there,
01:46:33 for him more than me at that time.

01:46:36 **Q.** Now, you said you had contact with him about how
01:46:42 many times?

01:46:42 **A.** Well, I would say myself personally probably about
01:46:44 twenty different times.

01:46:46 **Q.** And that was in what capacity, social or employment-
01:46:50 wise?

01:46:50 **A.** He worked for my dad so, you know, we all met at the
01:46:54 shop in the morning, you know, you might see him there and
01:46:57 there, but physically talk to him or that kind of thing any
01:47:00 more was dealing with my dad at the time and so, you know,
01:47:04 my dad to give him a day's work maybe here or there.

01:47:07 **Q.** Do you recall what year it was when your father was
01:47:10 giving him work?

01:47:11 **A.** I would say in the middle nineties, you know.

01:47:17 **Q.** Now, did James Steen ever talk about the
01:47:22 disappearance of Heidi Allen in your presence?

01:47:25 **A.** Yes, he did.

01:47:26 **Q.** When was that?

01:47:27 **A.** A few years after the Thibodeau trial, I do remember
01:47:33 that, he stopped by my house and he -- he -- I was in a
01:47:40 discussion with my boys about going for a bicycle ride, and
01:47:44 they were probably about fourteen or fifteen, and it was
01:47:47 getting late at night, and Jay Steen had stopped in to see
01:47:51 if I had a day's work that he could do, and he just
01:47:54 happened to pop in the door the same time I was like kind
01:47:57 of discussing with my boys to let them go for the bicycle
01:48:03 ride, and he looked right at my boys, and they were from me
01:48:06 to you away, and he said, "Oh, boys," he says, "It's
01:48:10 getting late and you better listen to your dad." He says,
01:48:14 "Look at what happened to Heidi Allen," and nobody was
01:48:18 talking about Heidi Allen at the time, and I was in kind of
01:48:22 a heated discussion with my boys so I wasn't paying a real
01:48:25 lot of attention at that time of what he was saying, and
01:48:27 then he continued on and he said, "She's long gone now,"
01:48:33 and he says, "She's gone to Canada," he says, "And I know
01:48:38 more about this Heidi Allen case than the Oswego County
01:48:43 Sheriff's, they got the wrong guys," he says, "They got the
01:48:47 Thibodeaus in there, and the Thibodeau boys didn't do it."

01:48:52 THE COURT: Before we go any further, is there
01:48:53 still the standing objection for the Court to determine
01:48:56 whether or not this is an alleged declaration against
01:48:59 penal interests?

01:49:00 MR. OAKES: Exactly, Your Honor, yes.

01:49:01 THE COURT: So all that's coming in at this point is going to be for the Court to determine whether or not it fits within the hearsay exception. We both agree to that?

01:49:09 MS. PEEBLES: Yes, Judge.

01:49:10 MR. OAKES: Yes, Your Honor.

01:49:11 THE COURT: Okay, go ahead, sir.

01:49:13 **A.** And -- and that was kind of about the end of the case and, you know, I continued to talk to my boys. Well, it didn't really hit me, you know, the sheriffs at my point at that time, they had the right guys, you know, they're the Sheriff Department, my brother was a Syracuse Police officer, you know, you couldn't tell me a sheriff department could make a mistake by no way.

01:49:41 MR. OAKES: Objection, Your Honor. This is beyond the scope of the questions. It's non-responsive.

01:49:45 THE COURT: I'll strike the non-responsive portion, sure.

01:49:48 **Q.** Mr. Clarke, when did you come forward about the information concerning Mr. Steen, the comments that he made to you, the admissions he made to you?

01:49:59 **A.** In October. I was watching the eleven o'clock news around the twentieth, twenty-second, somewhere in there, that Jay Steen was a liar, and I said jeeze, he's never

01:50:14 lied to me before, he's never lied to my family. My father
01:50:17 thought he was really respectful.

01:50:20 THE COURT: You mean October, 2014?

01:50:22 THE WITNESS: Yes, sir.

01:50:23 THE COURT: Thank you.

01:50:25 **Q.** So what did you do after you saw the news report?

01:50:29 **A.** Well, I -- I had tossed and turned, it was eleven
01:50:34 o'clock at night, I just couldn't believe that -- that Jay
01:50:39 Steen was a liar, I wanted to go to the jail and question
01:50:44 him myself about some things that happened, and I thought
01:50:47 he might tell me the truth even, so I called up a friend,
01:50:54 Jeremy Castor, which is Oswego County sheriff, and I said,
01:50:58 "Jeremy, look it. I'm -- I can't sleep. I got a problem
01:51:02 with this. If Jay Steen knows something, I think I can
01:51:05 talk to him." He says, "Well, Ron," he says, "All I can do
01:51:08 is tell you to call Oswego County Sheriffs and let them
01:51:11 know what you know," and he said, "Let them sort it out for
01:51:15 you, let them help you get this sorted out," so that's what
01:51:21 I did.

01:51:21 **Q.** Were you interviewed by anyone from the Sheriff's
01:51:24 Department?

01:51:24 **A.** Yes, I was.

01:51:25 **Q.** And do you recall when that was?

01:51:27 **A.** Jeremy Castor did come to my house, he took a
01:51:31 statement later on. During that time, I want to say a

01:51:40 couple weeks before this recess thing was like on a Friday, I got a phone call from somebody in the Sheriff Department, and they were questioning me on a few things, and then they told me that you might be calling me, and that was like two days later, I think Sunday or maybe even Monday, you called me and -- and asked me to take the stand and testify of what I had put on my statement.

01:52:10 **Q.** Did you talk to anyone at all from the District Attorney's Office at any point?

01:52:16 **A.** They might have said they were with the District Attorney's Office. Again, I have pretty real bad hearing so the phone is hard for me, and all I know is that -- that somebody had called me on Friday prior to when this trial thing started, I got a subpoena from you, what, Friday, the Monday after that to -- to be here, and in between there I think I maybe talked to John or somebody that was at -- from your office I believe. You know, sometimes I don't ask where they're from, I just tell them what I know.

01:52:56 **Q.** Okay, now let me ask you this about Mr. Steen. Did you ever witness Mr. Steen using any type of drugs?

01:53:05 **A.** I didn't witness him using it. One day my dad had me pick him up from his house, and some marijuana fell out of his pocket onto the floor in my truck, and I immediately told him he couldn't get in the truck with that marijuana in his pocket. My family was very churchgoing, and

01:53:26 marijuana or alcohol wasn't ever in our family. Every now
01:53:33 and then when he got in my truck after that he'd pull his
01:53:36 pockets out and say see, I don't have no drugs on me today.

01:53:38 **Q.** Do you know when the last time you spoke to Mr.
01:53:41 Steen was?

01:53:43 **A.** I spoke to Jay Steen about three weeks before the
01:53:51 murder that he did with his wife.

01:53:55 **Q.** Did he ever mention that he was going to kill his
01:53:58 wife Vickie to you?

01:54:00 MR. OAKES: Objection, Your Honor. Relevance.

01:54:01 THE COURT: What's the relevance, Ms. Peebles?

01:54:03 MS. PEEBLES: I'll withdraw the question.

01:54:04 THE COURT: Thank you. Sustained.

01:54:06 MS. PEEBLES: I have no further questions.
01:54:08 Thank you.

01:54:10 THE COURT: Mr. Oakes or Mr. Moody, just give
01:54:12 me a second please.

01:54:13 (Whereupon, there was a pause in the
01:54:16 proceeding.)

01:54:16 MR. OAKES: Thank you, Your Honor.

01:54:25 THE COURT: Okay, Mr. Oakes, when you're
01:54:27 ready.

01:54:27 MR. OAKES: Thank you, Your Honor.

01:54:29 CROSS-EXAMINATION

01:54:30 BY MR. OAKES:

01:54:30 **Q.** Good afternoon, Mr. Clarke.

01:54:41 **A.** Hi.

01:54:43 **Q.** How are you today?

01:54:43 **A.** Good.

01:54:44 **Q.** Good. Actually, Mr. Clarke, for the record, I was the person who called you a couple days before the hearing started back in January, I think it was a Saturday I called you?

01:54:58 **A.** Okay, it may have been a Saturday, it may have been a Friday. I am not a person, don't ask me when I got married or when I had my first kid because I couldn't tell you.

01:55:08 **Q.** Your wife's not here is she?

01:55:11 **A.** No, I don't have a wife.

01:55:13 **Q.** Mr. Clarke, at that time I talked to you, I think I told you I just become aware of the statement you had given to the sheriffs, do you recall that?

01:55:22 **A.** Yes.

01:55:22 **Q.** And I asked you at that point, I think I told you that Ms. Peebles would probably want to speak with you?

01:55:28 **A.** Yes, I do remember that.

01:55:30 **Q.** Okay, and I got a couple different contact numbers for you or from you, told you I was going to pass them along to Ms. Peebles?

01:55:37 **A.** Okay.

01:55:38 **Q.** Do you remember that?

01:55:39 **A.** No, not really.

01:55:41 **Q.** Okay, that's fine. Do you remember giving me your
01:55:45 son's cell phone?

01:55:45 **A.** Yes, I do.

01:55:46 **Q.** Okay, and I think I told you if Ms. Peebles called
01:55:51 to please speak with her?

01:55:53 **A.** Yes, you did.

01:55:54 **Q.** And when she called, did you speak with her like I
01:55:56 asked you to?

01:55:56 **A.** I don't know if it was her but I think it was her --
01:55:59 I think it was John, her assistant or whatever at the time.

01:56:04 **Q.** Somebody from her office though?

01:56:05 **A.** Yes.

01:56:06 **Q.** Okay. Well, Mr. Clarke, Ms. Peebles asked you about
01:56:11 a conversation that occurred with Jay Steen back when your
01:56:15 boys were going on a bike ride.

01:56:17 **A.** Yes.

01:56:17 **Q.** Do you remember when that was?

01:56:19 **A.** I just told you I can't remember when my first kid
01:56:22 was born really, but I do know, I do know that I kind of
01:56:29 blew it off a little at the time because it was after the
01:56:32 trial and my brother was a police officer so there was no
01:56:37 doubt the sheriff had the wrong person at that time.

01:56:41 **Q.** Okay, and I think you told Ms. Peebles you generally

01:56:45 knew Jay Steen to be a truthful person?

01:56:47 **A.** Yes, I did.

01:56:48 **Q.** Now did you have experiences with Mr. Steen that led 01:56:51 you to that conclusion?

01:56:53 **A.** Yes, I -- well, that day I -- that day that he said 01:56:58 that to my kids of course I was, you know, I was pretty 01:57:04 stressed 'cause I really didn't want them for a bike ride, 01:57:07 so I was more concerned about what was going on there. 01:57:10 What really led me to this was is that when they said he 01:57:13 was a liar, I was like no way, this guy don't lie, but then 01:57:20 finding out that sometimes the law isn't so nice, it really 01:57:25 laid there for a while, and I did, like I said, it was kind 01:57:29 of late at night when I did call Jeremy because I couldn't 01:57:35 think of how Jay Steen could have said the Thibodeaus 01:57:39 weren't guilty, and twenty years later, or fifteen, 01:57:42 whatever it was later, that he said still the same story, 01:57:46 they weren't guilty, so at that point I felt that they 01:57:50 weren't, and I am a well-known person in Mexico and 01:57:54 Palermo, and I've talked around people, and many other 01:57:58 people felt the same way, so it led me to believe that.

01:58:02 **Q.** All right, so in talking to other people around 01:58:05 Mexico, they have shared their opinion with you that they 01:58:08 don't think the Thibodeaus did it?

01:58:09 **A.** Definitely.

01:58:11 **Q.** Okay.

01:58:11 **A.** And when I say that, over five-hundred people probably.

01:58:15 **Q.** Okay, so those five-hundred people that told you the Thibodeaus didn't do it, do you think they are involved with the abduction of Heidi Allen?

01:58:23 **A.** No, I don't. They -- they -- different ones explained that the Thibodeaus weren't real rich back then, they were poor boys, and they weren't that kind of a boy, and just different things that they had said to me at that time and -- and then again, I also took my -- wrote my statement that, you know, I didn't believe that Jay Steen was lying, I believed that he knew more about it. In fact, I really -- I believe that he wasn't telling the truth because I felt that maybe somebody had a gun to his mother's head or something. Since then I found out his mother's not alive, so that tells you what kind of communication I've had in the past few years, I didn't even know his mother had passed on, you know.

01:59:07 **Q.** Well, Mr. Clarke, during the course of the years I mean you would agree the Heidi Allen case was a big case within the community?

01:59:16 **A.** What's that?

01:59:17 **Q.** That this case is -- Heidi Allen's kidnapping is a pretty important case to the Oswego County community, would you agree with that statement?

01:59:26 **A.** I believe that totally one-hundred percent.

01:59:29 **Q.** Okay, and you live in the Mexico area?

01:59:31 **A.** Yes, I do.

01:59:32 **Q.** And again, that's just a little ways down the road
01:59:36 from New Haven where Heidi was kidnapped from, correct?

01:59:39 **A.** Correct.

01:59:39 **Q.** Now in the course of the last twenty years out and
01:59:42 about, have you heard people talk about their theories
01:59:45 about what happened to Heidi?

01:59:48 MS. PEEBLES: Objection. Relevance, Judge.

01:59:50 THE COURT: I see it. No, I'm going to allow
01:59:52 it.

01:59:52 **A.** I didn't see -- I didn't see much conversation after
01:59:58 they accused the Thibodeaus at all. In fact, the biggest
02:00:03 thing I remembered about the Heidi Allen case is that they
02:00:07 marched down County Route 3 past my house basically saying
02:00:11 I -- looking for her, that was one of the things I
02:00:18 remember, and that they had on the TV that Thibodeaus were
02:00:22 in jail, arrested for it. I didn't understand how they
02:00:26 arrested one brother and/or arrested them both and then one
02:00:30 brother was guilty and one wasn't, I didn't understand that
02:00:33 part, I did hear that, and then I heard Jay Steen say a few
02:00:39 years after that about that she was long gone to Canada.
02:00:43 He didn't say dead or alive, he just said she was long gone
02:00:47 to Canada.

02:00:49 **Q.** Okay, well, and that's actually what I want to talk
02:00:52 to you about, Mr. Clarke. You said you were talking to
02:00:55 your boys and you were trying to talk them out of going for
02:00:58 a bicycle ride because it was getting dark.

02:01:00 **A.** Correct.

02:01:00 **Q.** And so Jay Steen said something like look what
02:01:05 happened to Heidi Allen, basically referencing her
02:01:07 kidnapping.

02:01:08 **A.** Correct.

02:01:09 **Q.** And was it your sense he was trying to convince the
02:01:12 boys to stay home like you wanted them to stay home?

02:01:16 **A.** Yeah. I was convinced that he was trying to
02:01:19 convince them to stay home.

02:01:20 **Q.** And I mean when your boys were little, did you ever
02:01:23 tell them stories basically of the boogie man or look what
02:01:26 could happen to kind of get them to stay home or not do
02:01:29 things that you might think are dangerous?

02:01:31 **A.** No. That's one thing I didn't do. I walked the
02:01:34 woods in the dark with my boys and say see, there's nothing
02:01:37 out here.

02:01:37 **Q.** Okay, and I guess when I say about the boogie man, I
02:01:42 don't mean specifically the boogie man. Did you ever tell
02:01:45 your boys hey, look, don't do this because this could
02:01:48 happen or see something bad happen on the news, see, boys,
02:01:51 that's what could happen if you do that, ever do something

02:01:55 like that as a dad?
02:01:56 **A.** Yeah, I guess I -- I probably have done something
02:02:00 like that.
02:02:01 **Q.** And I guess my point, Mr. Clarke, is was it your
02:02:06 sense that Jay Steen was trying to get the boys to stay
02:02:08 home like you wanted rather than going for a bike ride like
02:02:11 they wanted to? Is that your sense?
02:02:14 **A.** I didn't really give it much thought at that time.
02:02:19 It must have been enough thought that when I was laying in
02:02:23 bed that October night that it really hit me hard.
02:02:25 **Q.** And that's fair enough. And again, you said when
02:02:29 Jay said she's long gone to Canada, he didn't say whether
02:02:32 she was alive, he didn't say whether she was dead?
02:02:35 **A.** No, no, no. He didn't say whether she was alive or
02:02:39 dead.
02:02:40 **Q.** He didn't say she was in a van squished up and sent
02:02:43 to Canada?
02:02:44 **A.** No, he did not say that.
02:02:46 **Q.** Did he tell you how he knew she was gone to Canada?
02:02:50 **A.** No, he didn't say that.
02:02:52 **Q.** Okay, so based on what he told you, he didn't tell
02:02:56 you how he knew this, he was just telling you what his
02:02:58 thoughts were, is that fair to say?
02:03:01 MS. PEEBLES: Objection.
02:03:02 THE COURT: I'll allow it.

02:03:03 **A.** Now what was that again?

02:03:05 **Q.** Let me rephrase it. He didn't tell you how he knew that she had gone to Canada, just expressing his belief that that's where she was.

02:03:15 **A.** Yeah. I kind of got that, but I got a real sincere feeling that he might have known something about the case at that time.

02:03:25 **Q.** Well, I mean your feelings aside, Mr. Clarke, did he tell you that he was involved in the abduction of Heidi Allen?

02:03:33 **A.** No, he didn't.

02:03:33 **Q.** Did he tell you that he helped kill her?

02:03:37 **A.** No, he didn't.

02:03:38 **Q.** Did he tell you that he helped dismember her?

02:03:40 **A.** No, he didn't.

02:03:41 **Q.** Did he tell you that he helped get rid of her body?

02:03:44 **A.** No, he didn't.

02:03:46 **Q.** Did he say that he was in any way personally involved with the abduction?

02:03:50 **A.** No, he didn't.

02:03:51 **Q.** Killing of Heidi Allen?

02:03:54 **A.** No, he didn't.

02:03:55 **Q.** So he never actually made any admissions of wrongdoing to you, is that fair to say?

02:04:04 MS. PEEBLES: Objection. That's a legal

02:04:06 conclusion.

02:04:07 THE COURT: It's a legal conclusion. I'll
02:04:09 sustain the objection.

02:04:11 MR. OAKES: Okay, that's fine.

02:04:12 **Q.** Did he ever say the name Roger Breckenridge to you?

02:04:30 **A.** No.

02:04:31 **Q.** Did he ever say the name Michael Bohrer to you?

02:04:34 **A.** No.

02:04:34 **Q.** Dan Barney?

02:04:35 **A.** No.

02:04:36 **Q.** Jennifer Wescott?

02:04:37 **A.** No.

02:04:37 **Q.** Did he give you any explanation as to why he thought
02:04:41 Heidi Allen was abducted?

02:04:43 **A.** No.

02:04:45 **Q.** Nothing beyond what you've already told us, correct?

02:04:48 **A.** Exactly.

02:04:49 **Q.** Thank you, Mr. Clarke.

02:04:51 **A.** Okay.

02:04:52 THE COURT: Ms. Peebles?

02:04:56 MS. PEEBLES: I have no further questions. No
02:04:58 further questions. Thank you.

02:04:59 THE COURT: Mr. Clarke, you can step down,
02:05:00 sir. Thank you for your time.

02:05:01 THE WITNESS: Okay thank you.

02:05:02 THE COURT: Next witness?

02:05:03 MS. PEEBLES: Carl Robinson.

02:05:06 THE COURT: Let me ask how long is Mr.
02:05:08 Robinson going to take, an hour, a half hour?

02:05:10 MS. PEEBLES: It depends on how long the
02:05:12 cross-examination is. My direct won't be terribly
02:05:14 long, Judge.

02:05:15 THE COURT: Why don't we take a break after
02:05:17 Mr. Robinson's direct and then you can cross.

02:05:34 (Whereupon, there was a pause in the
02:05:53 proceeding).

02:05:53 THE COURT: Stand up please.

02:05:54 THE CLERK: Raise your right hand, put your
02:05:56 left on the Bible.

02:05:57 CARL ROBINSON, Called as a witness, having been
02:05:58 duly sworn, was examined and testified as follows:

02:05:58 THE CLERK: Please state your name for the
02:06:05 record.

02:06:05 THE WITNESS: Carl Robinson.

02:06:06 THE CLERK: Spell your first name.

02:06:07 THE WITNESS: C-A-R-L.

02:06:08 THE CLERK: Spell your last name.

02:06:11 THE WITNESS: R-O-B-I-N-S-O-N.

02:06:12 THE CLERK: Have a seat please.

02:06:13 THE COURT: Mr. Robinson, before you start

02:06:15 answering any questions, I'm going to ask you do you
02:06:17 consent to having your testimony video and audio taped?

02:06:21 THE WITNESS: Yes, sir.

02:06:21 THE COURT: Okay, thank you.

DIRECT EXAMINATION

02:06:24 BY MS. PEEBLES:

02:06:25 **Q.** Mr. Robinson, how old are you?

02:06:27 **A.** Thirty-two.

02:06:27 **Q.** And did you grow up in Oswego County?

02:06:30 **A.** Yes, I did.

02:06:31 **Q.** What -- where were you living in Oswego County when
02:06:34 you were growing up?

02:06:35 **A.** Parish, New York.

02:06:36 **Q.** And in particular, what -- what road did you grow up
02:06:38 on?

02:06:39 **A.** Bengal Road.

02:06:40 **Q.** What -- how old were you when you moved to Bengal
02:06:43 Road?

02:06:43 **A.** When I moved to Bengal Road?

02:06:45 **Q.** Yeah.

02:06:45 **A.** I'd say probably about between twelve and fourteen
02:06:49 years old.

02:06:49 **Q.** And what is your educational background? How far
02:06:54 did you get in school?

02:06:55 **A.** I have a GED, but I made it to up to tenth grade in

02:07:00 APW high school.
02:07:00 **Q.** What is your occupation?
02:07:02 **A.** I am disabled.
02:07:03 **Q.** And prior to your disability what were you doing?
02:07:07 **A.** I owned a computer repair business, build and repair
02:07:10 computers. I build web sites.
02:07:12 **Q.** And where were you doing that before you became
02:07:15 disabled?
02:07:16 **A.** In Barnesville, North Carolina.
02:07:19 **Q.** And I want to ask you some questions now about where
02:07:24 you worked in or around the time frame of 2001 and 2002
02:07:28 when you were living in Oswego County. Did you work for a
02:07:32 company called Medspar?
02:07:33 **A.** I did.
02:07:33 **Q.** And how old were you when you began working for
02:07:36 Medspar?
02:07:36 **A.** About -- it was in between like twenty-one to
02:07:41 twenty-two.
02:07:42 **Q.** And who owned Medspar?
02:07:45 **A.** Michael Bohrer.
02:07:46 **Q.** Did he hire you?
02:07:48 **A.** Yes.
02:07:48 **Q.** Before working for Medspar, did you know Michael
02:07:54 Bohrer?
02:07:54 **A.** I did not.

02:07:54 **Q.** Where was Medspar located?

02:07:58 **A.** 4327 State Route 69 in Parish.

02:08:02 **Q.** Can you describe your work area when you were working inside Medspar?

02:08:06 **A.** Had a whole area to myself. I was the -- I was hired on as the head technician. I repaired customer computers, installed Windows, different operating systems, software issues, virus removals and such.

02:08:20 **Q.** How long did you work for Medspar?

02:08:23 **A.** For about two years.

02:08:26 **Q.** Now, when you worked at Medspar, did you know an individual named Roger Breckenridge?

02:08:32 **A.** I did.

02:08:33 **Q.** And when did you first meet Roger Breckenridge?

02:08:35 **A.** I met Roger before I was fifteen. He was the mutual friend met him through, I met him through my friends, he was family of them.

02:08:46 **Q.** And who was your friend?

02:08:47 **A.** Daniel West, Mikey West, Josh Wild, Victoria West.

02:08:55 **Q.** And those were whose children, Victoria West, Daniel West?

02:09:02 **A.** They were Rod West's children.

02:09:04 **Q.** Excuse me?

02:09:06 **A.** They were Rodney West's children.

02:09:07 **Q.** And was Rod West related to Roger Breckenridge?

02:09:10 **A.** Yes, it's his brother.

02:09:11 **Q.** How so?

02:09:11 **A.** His brother.

02:09:13 **Q.** Now, when you were hanging around the West children at that time, did you know a person by the name of Jennifer Wescott?

02:09:19 **A.** I did.

02:09:20 **Q.** How did you know Jennifer Wescott?

02:09:23 **A.** She was with Roger Breckenridge.

02:09:25 **Q.** How often did you socialize with Roger Breckenridge or Jen Wescott?

02:09:31 **A.** Occasionally at the time, they were normally always be up there for family gatherings and what not, and I was really close with that family, I was like brothers and sisters with them all, we would come home from school and just go up there and hang out and visit and on a regular basis that they would be there as well because they were family.

02:09:48 **Q.** Now, did Jennifer Wescott ever bring up the abduction of Heidi Allen in front of you?

02:09:57 **A.** She did. She did.

02:09:59 **Q.** When was that?

02:10:00 **A.** We were at a family picnic, more like a cookout slash birthday party, I'm not exactly sure which child it was for, they would have parties sometimes and cookouts,

02:10:12 and we were all sitting at the picnic tables one day when
02:10:14 someone had mentioned something about Heidi Allen. Well,
02:10:17 someone mentioned something about missing kids, Jennifer
02:10:20 brought up Heidi Allen, and I'm not sure who else was at
02:10:23 the table was listening. I was sitting directly across
02:10:26 from her at the time so obviously I was listening, and I
02:10:29 asked her well, what about Heidi Allen, and she said to me
02:10:33 they had the wrong guy in prison and they didn't know
02:10:36 exactly who had the right person.

02:10:37 **Q.** Now, where were you when this conversation took
02:10:40 place exactly, whose house were you at?

02:10:42 **A.** At Rodney West's house.

02:10:43 **Q.** Do you recall when that was, what -- how long ago?

02:10:46 **A.** I would say probably about ten years ago or so.

02:10:50 **Q.** I want to ask you some questions now about your most
02:10:54 recent communications with Jennifer Wescott. Did you
02:10:59 reconnect with Jennifer Wescott in June of 2014?

02:11:02 **A.** I did.

02:11:03 **Q.** And how did that come about?

02:11:05 **A.** I was on my Facebook page, she was still a mutual
02:11:08 friend on Facebook as well as -- as much as everybody else
02:11:11 I had grown up with, I was scrolling through the news feed
02:11:14 and I saw a statement that she posted about what she could
02:11:17 do about the Post-Standard harassing her, so I sent her a
02:11:20 private e-mail message on Facebook asking her what she

02:11:23 meant by that. She told me that they kept on harassing her
02:11:25 about the Heidi Allen case, and she wanted to know what she
02:11:28 could do legally, if she could file charges for harassment.
02:11:31 She told me that she had agreed to do an interview with
02:11:33 them but then later on she changed her mind and she no
02:11:37 longer wanted to do anything with it. Then after that,
02:11:40 everything was fine, she stopped talking for a little bit.
02:11:46 Then she came back on and started talking to me again.

02:11:49 THE COURT: Hold on. Stop right there. Same
02:11:51 standing objection?

02:11:53 MR. OAKES: Same.

02:11:54 THE COURT: Alleged declaration against penal
02:11:56 interest?

02:11:56 MS. PEEBLES: Yes. I'm going to approach,
02:11:58 Your Honor, and hand Exhibit 37 to Mr. Robinson.

02:12:01 THE COURT: I know, but is it your position?

02:12:02 MS. PEEBLES: It's my position, it's --

02:12:04 THE COURT: Ms. Wescott's statements to this
02:12:06 gentleman is against her penal interest.

02:12:08 MS. PEEBLES: Yes, Judge.

02:12:08 THE COURT: And you have the same standing
02:12:10 objection.

02:12:10 MR. OAKES: The same standing objection, and
02:12:11 my sense was that was essentially a foundational
02:12:14 question again to what Ms. Peebles was going to talk

02:12:18 about next.

02:12:18 THE COURT: Just want to make sure I
02:12:20 understand.

02:12:20 **Q.** I'm going to hand you what's been marked as Defense
02:12:22 Exhibit 37 and ask if you can identify Exhibit 37.

02:12:26 **A.** I can. This is one of the messages that we were
02:12:30 discussing through my private Facebook account.

02:12:33 MS. PEEBLES: Your Honor, I'd offer Exhibit
02:12:39 37.

02:12:39 THE COURT: Any objection? I mean other than
02:12:42 we have a standing objection.

02:12:43 MR. OAKES: Well, there's a standing
02:12:45 objection. I guess there's also the question of
02:12:48 authentication.

02:12:50 THE COURT: My question is how is this Exhibit
02:12:52 37 an example of an alleged statement against penal
02:12:55 interest? What penal interest?

02:12:57 MS. PEEBLES: Well --

02:12:58 THE COURT: Did she admit that she had some
02:13:01 active involvement in the disappearance of Heidi Allen?

02:13:04 MS. PEEBLES: Well, it -- Your Honor, it's our
02:13:05 position that based on that, in combination with the
02:13:09 audio recording, it does corroborate that she had some
02:13:13 involvement in the disposal of the van in addition to
02:13:16 the remains that were in the van, and it's our position

02:13:20 that the junking and the crushing of the van she was
02:13:23 involved in.

02:13:25 MR. OAKES: And again, Your Honor, I don't
02:13:27 believe there is a declaration against penal interest
02:13:29 within the exhibit, but again, subject to the standing
02:13:33 objection, it's ultimately a decision for the Court to
02:13:35 reach.

02:13:36 THE COURT: Okay, so we agree on that, but the
02:13:38 other objection is authentication.

02:13:40 MR. OAKES: Authentication. He's talking
02:13:42 about an e-mail message that he had received. I think
02:13:49 the question is how do we know who was on the other end
02:13:51 or how does he know.

02:13:52 THE COURT: How do we know that?

02:13:53 **Q.** Mr. Robinson, when you were communicating on
02:13:57 Facebook, what identification were you looking at when you
02:14:01 were responding? Was there a photograph on the Facebook
02:14:03 page?

02:14:04 **A.** There is.

02:14:04 **Q.** And who was the photograph of?

02:14:06 **A.** Of Jennifer Wescott.

02:14:08 **Q.** And was her contact information on her Facebook
02:14:12 account?

02:14:12 **A.** It was.

02:14:12 **Q.** And had you previously had any contact with Jennifer

02:14:15 Wescott on Facebook?

02:14:17 **A.** I did.

02:14:19 MS. PEEBLES: Your Honor, I think that he's identified that it's her Facebook page and he had communication with her.

02:14:25 THE COURT: I'm -- I'm not going to allow it in. That does not authenticate that's her on the other end. I'm not going to allow it in. I'm going to sustain the objection.

02:14:33 **Q.** All right, after this communication that you had with Jennifer Wescott, did you have any subsequent communications with her online?

02:14:43 **A.** I did.

02:14:44 **Q.** Do you remember when that was?

02:14:45 **A.** About -- about a month later, sometime in early July.

02:14:49 **Q.** And do you remember how that was initiated?

02:14:54 **A.** Yeah. I had received another in-box message on my Facebook page, it was marked in my other box, she sent me another message from a different account which was also snap shotted in the URL, the web name to the web page, so it still showed a profile account, so it was her. She told me it was shortly after the coverage of the search for the cabins off Rice Road, she had messaged me and said if anybody asked you, do not tell them that I ever lived on

02:15:32 Rice Road.

02:15:32 MR. OAKES: Objection, Your Honor.

02:15:33 THE COURT: Hold on. What's your objection, 02:15:34 Mr. Oakes?

02:15:34 MR. OAKES: Objection right now is one, 02:15:36 non-responsive, and two, he's basically giving a 02:15:39 hearsay declaration.

02:15:41 THE COURT: Again, goes to standing objection.

02:15:45 MR. OAKES: Goes to the standing objection.

02:15:47 THE COURT: I would say it's non-responsive 02:15:48 first so I'm going to sustain the non-responsive 02:15:50 objection. You can add a followup question.

02:15:52 MR. OAKES: Additionally, Your Honor, I'm 02:15:54 sorry, my concern is also the same authentication 02:15:57 issue.

02:15:57 THE COURT: Well, let's have him start 02:15:59 answering or have Ms. Peebles ask a question before you 02:16:02 make that objection.

02:16:03 MR. OAKES: Okay.

02:16:04 THE COURT: You don't know what the followup 02:16:06 question is going to be.

02:16:06 MR. OAKES: Okay, thank you.

02:16:08 THE COURT: I anticipate there will be an 02:16:09 objection.

02:16:11 **Q.** All right, so you said you had a followup message

02:16:14 with Ms. Wescott after your initial communication in June
02:16:18 of 2014.

02:16:18 **A.** Yes, ma'am.

02:16:19 **Q.** And you said that that occurred during the search of
02:16:23 the cabin on Rice Road.

02:16:24 **A.** That's correct.

02:16:25 **Q.** And that was in July of 2014?

02:16:27 **A.** Right.

02:16:28 **Q.** Now, that -- during that -- what did she say to you
02:16:32 during that communication?

02:16:33 **A.** She told me that --

02:16:34 MR. OAKES: Objection, Your Honor.

02:16:35 THE COURT: What's the objection?

02:16:36 MR. OAKES: Authentication, again, he's
02:16:38 talking about electronic communication, we have no idea
02:16:42 who is sending it. Counsel has known about this since
02:16:45 July of last year. They could have subpoenaed
02:16:47 Facebook, subpoenaed further record. At this point
02:16:50 this witness doesn't know anything who's on the other
02:16:53 side.

02:16:53 THE COURT: Ms. Peebles, how do we
02:16:55 authenticate? I mean other than him saying it's her
02:16:58 account, do we have any knowledge who is on the other
02:17:00 end, on the other end?

02:17:02 MS. PEEBLES: Well, I think we will, Judge, 02:17:04 when we have Jennifer Wescott on the stand, but we cannot offer it for the truth of the matter at this point, and simply for the reaction of the listener, in this particular instance Mr. Robinson, so I won't offer it right now for the truth of the matter asserted.

02:17:19 MR. OAKES: Your Honor, how's his reaction relevant with all due respect?

02:17:23 THE COURT: Yeah. How is it -- that's the question I was going to have. How is it relevant to --

02:17:27 MS. PEEBLES: Because he responded back to her question as far as her inquiry about or her instruction not to say anything about her living on Rice Road.

02:17:36 THE COURT: Then you have to limit your question to what was your reaction based upon what you -- what you heard, not what she allegedly had said because we don't know who allegedly said this at this point. Much like a hearsay hearsay, and what was your reaction to that. I'll allow that.

02:17:51 MS. PEEBLES: I kind of think it's a disingenuous argument on the part of Mr. Oakes because Ms. Wescott has acknowledged communicating via Facebook.

02:18:00 THE COURT: The fact of the matter is she hasn't been here to testify so I'm going to sustain the objection. If you want to ask how he reacted to this

02:18:06 purported e-mail from Ms. Wescott, that's fine.

02:18:09 **Q.** Well, Mr. Robinson, it was your belief that you were
02:18:11 communicating with Ms. Wescott when you were -- when you
02:18:15 were exchanging these messages, it was your belief that you
02:18:18 were actually communicating with Ms. Wescott.

02:18:20 **A.** Yes, ma'am.

02:18:20 **Q.** And did you have any reason to believe that you were
02:18:23 communicating with anyone other than Jennifer Wescott?

02:18:26 **A.** I did not.

02:18:28 **Q.** When you were working at Medspar, did Michael Bohrer
02:18:35 ever sell marijuana to anyone in your presence?

02:18:37 **A.** He did.

02:18:38 **Q.** And who did he sell marijuana to?

02:18:41 MR. OAKES: Objection, Your Honor. Relevance.

02:18:43 THE COURT: I'm going to allow it.

02:18:45 MR. OAKES: I believe he testified that he
02:18:46 started working for Medspar in 2000 or after 2000. How
02:18:51 is that relevant to these proceedings?

02:18:52 THE COURT: I want to find out with a followup
02:18:54 question before I find out if it's relevant.

02:18:56 MR. OAKES: Okay.

02:18:56 **Q.** You can answer the question.

02:18:57 **A.** He sold it to numerous people, those who I never
02:19:01 actually met by name, a couple of the people that I do know
02:19:04 names of, one being Roger Breckenridge, James Steen, and

02:19:09 while they were there, Jennifer Wescott was also with them.
02:19:12 At the time she was dating Roger Breckenridge.

02:19:14 **Q.** Do you remember what year that was?

02:19:17 **A.** It was in between -- well, between 2002 and
02:19:22 throughout -- I quit working about 2004.

02:19:24 **Q.** You stopped working at Medspar in 2004?

02:19:27 **A.** Yes.

02:19:29 MR. OAKES: Your Honor, again, at this point
02:19:30 then I would renew my objection. We're talking between
02:19:35 2002/2004. It's not relevant to the time period at
02:19:37 issue.

02:19:38 THE COURT: I'll sustain.

02:19:38 MS. PEEBLES: Well, excuse me, however, Ms.
02:19:40 Wescott has claimed she never met Michael Bohrer until
02:19:46 2007.

02:19:46 THE COURT: Ms. Wescott has not indicated
02:19:48 anything yet. Has she taken the witness stand?

02:19:50 MS. PEEBLES: Judge, in evidence is the
02:19:50 interview with Mr. Pietroski and Jennifer Wescott.
02:19:53 It's already in evidence. In that statement during
02:19:54 that interview she indicated that she'd never met
02:19:57 Michael Bohrer until she bought a computer from him in
02:20:00 2007.

02:20:01 THE COURT: Ms. Wescott has not taken the
02:20:03 stand though to say that, right?

02:20:04 MS. PEEBLES: I don't know what Ms. Wescott's
02:20:07 going to say, but I do know we have in evidence an
02:20:10 audio recording of her making that statement.

02:20:12 MR. OAKES: Your Honor, I guess if he wants to
02:20:14 talk about a knowledge of seeing Ms. Wescott with Mr.
02:20:19 Bohrer during that time period that's one thing, but
02:20:23 the whole talk about the marijuana and sales of
02:20:24 marijuana I guess begs the question even if Mr. Bohrer
02:20:27 did do that in 2002, so what? How is that relevant to
02:20:30 these proceedings?

02:20:31 THE COURT: I'm going to sustain the
02:20:32 objection.

02:20:33 **Q.** Did you ever hear Michael Bohrer talk about Heidi
02:20:48 Allen in your presence when you worked at Medspar?

02:20:50 **A.** I did.

02:20:51 **Q.** And what did you hear him say?

02:20:52 **A.** Well, when I first started there, I noticed he had a
02:20:55 tack board up on the front door that said missing persons.
02:20:58 The only one that he had up posted at the time was of Heidi
02:21:01 Allen. I asked him why -- I inquired why he did not have
02:21:05 any of the other missing people of the county or the
02:21:07 surrounding areas, and he said that because he did not have
02:21:09 any photographs. He then started to tell me that he was a
02:21:13 private investigator working for the family, working for
02:21:16 the Allen family, and he was just trying to find out any

02:21:19 information that he possibly could about her. He had documents, all kinds of stuff in a briefcase that he rarely ever pulled out that had all kinds of documentation on Heidi Allen. He then a couple days after that, the tack board came down and he no longer -- he never mentioned it directly to me about anything about Heidi Allen after that.

02:21:41 MS. PEEBLES: No further questions.

02:21:46 THE COURT: Mr. Oakes? Are you all right? You need water, sir?

02:21:51 THE WITNESS: No.

02:22:03 MR. OAKES: Mr. Robinson.

02:22:05 THE WITNESS: Yes, sir.

02:22:06 THE COURT: Actually, actually let's take a fifteen-minute break right now.

02:22:10 MR. OAKES: Okay, that's fine.

02:22:11 THE COURT: I think we discussed taking a break prior to Mr. Robinson being cross-examined. We'll take a break until 2:40.

02:22:24 (Whereupon, there was a recess.)

02:40:16 THE COURT: Mr. Robinson, consider the fact you're still under oath, sir, okay?

02:40:42 THE WITNESS: Yes, sir.

02:40:43 THE COURT: Thank you. Mr. Oakes.

02:40:45 MR. OAKES: Thank you very much, Your Honor.

02:40:47 CROSS-EXAMINATION

02:40:48 BY MR. OAKES:

02:40:48 **Q.** Mr. Robinson, you said you were speaking with -- you were at a Breckenridge/Wescott family party about ten years ago?

02:40:57 **A.** Yes, sir.

02:40:57 **Q.** And you said Jennifer Wescott brought up Heidi Allen?

02:41:01 **A.** Yes, sir.

02:41:01 **Q.** And her statement at the time was they have got the wrong guy in prison?

02:41:05 **A.** Yes, sir.

02:41:05 **Q.** Those were her words?

02:41:07 **A.** Yep.

02:41:07 **Q.** Did she explain why she thought that?

02:41:10 **A.** No.

02:41:12 **Q.** Did she admit to kidnapping Heidi Allen?

02:41:18 **A.** She did not.

02:41:18 **Q.** Did she admit to being involved in the killing of Heidi Allen?

02:41:21 **A.** No, she did not.

02:41:22 **Q.** The disposal of Heidi Allen's body?

02:41:25 **A.** She did not.

02:41:26 **Q.** You said when you worked for Michael Bohrer or worked with Michael Bohrer at Medspar, you had a conversation with him at one point regarding the missing

02:41:42 Heidi Allen poster that was up in the shop.

02:41:44 **A.** I did.

02:41:45 **Q.** And at that time he told you he was investigating the abduction and kidnapping of Heidi Allen? 02:41:48

02:41:51 **A.** Yes.

02:41:55 **Q.** He never admitted kidnapping her did he?

02:41:57 **A.** No.

02:41:59 **Q.** Did he admit to killing her?

02:41:59 **A.** No.

02:41:59 **Q.** Did he admit to disposing of her body?

02:42:03 **A.** No, sir.

02:42:03 **Q.** Did he say anything about Roger Breckenridge being involved in those acts? 02:42:05

02:42:06 **A.** No.

02:42:06 **Q.** Did he say anything about James Steen being involved in those acts? 02:42:08

02:42:09 **A.** He did not.

02:42:10 MR. OAKES: Okay, I have no further questions, Your Honor. 02:42:12

02:42:15 THE COURT: Ms. Peebles?

02:42:17 MS. PEEBLES: Judge, I just want to point out I had a case, People versus Pierre, where the Court allowed the admission of an instant message where the response would not have made sense given the person who sent the question to the recipient on the other end, so 02:42:18 02:42:22 02:42:27 02:42:31

02:42:36 I would like to renew my request to introduce --

02:42:39 THE COURT: What department is that?

02:42:40 MS. PEEBLES: That's the First Department,
02:42:43 Judge.

02:42:43 THE COURT: No, the Court's going to stand by
02:42:45 its original holding on that. Any more questions of
02:42:49 Mr. Robinson?

02:42:50 MS. PEEBLES: No, Your Honor.

02:42:51 THE COURT: Mr. Robinson, you can step down
02:42:53 please, sir.

02:42:53 THE WITNESS: Thank you, Your Honor.

02:42:56 THE COURT: Ms. Peebles, your next witness?

02:43:01 MS. PEEBLES: We call Sheriff Todd.

02:43:02 THE COURT: Is he here?

02:43:03 MS. PEEBLES: I think he is.

02:43:04 THE COURT: Did you get copies of what I had
02:43:07 given, Ms. Peebles?

02:43:08 MS. PEEBLES: No, Judge.

02:43:08 THE COURT: Do you need those for the
02:43:10 questioning?

02:43:11 MS. PEEBLES: Not for -- not that I know of.

02:43:16 THE COURT: I thought I had made copies, but I
02:43:18 apologize. I'll make sure I get them to you.

02:43:23 MS. PEEBLES: Okay.

02:43:47 THE CLERK: Left hand on the Bible.

02:43:52 REUEL TODD, Called as a witness, having been duly sworn, was examined and testified as follows:

02:43:58 THE CLERK: Please state your name for the record.

02:43:59 THE WITNESS: Ruell A. Todd.

02:44:01 THE CLERK: Spell your first name.

02:44:02 THE WITNESS: R-E-U-E-L.

02:44:04 THE CLERK: And your last name.

02:44:05 THE WITNESS: T-O-D-D.

02:44:08 THE CLERK: Have a seat please.

02:44:12 THE COURT: I have to ask, Sheriff Todd, prior to starting your testimony do you consent to having your testimony video or audio taped?

02:44:19 THE WITNESS: Doesn't matter. It's okay with me.

02:44:21 THE COURT: So you will consent?

02:44:22 THE WITNESS: Yeah, I will.

02:44:22 THE COURT: Okay, that's a consent. Thank you, sir.

DIRECT EXAMINATION

BY MS. PEEBLES:

02:44:27 **Q.** Good afternoon, Sheriff Todd.

02:44:28 **A.** Good morning.

02:44:29 **Q.** How long have you worked for the Oswego County Sheriff's Department?

02:44:32 **A.** Forty-one and a half years.
02:44:35 **Q.** And before you were elected sheriff, what positions
02:44:38 did you hold within the Sheriff's Department?
02:44:40 **A.** Undersheriff.
02:44:41 **Q.** Were you undersheriff in April of 1994?
02:44:45 **A.** I was.
02:44:46 **Q.** Now I want to ask you some questions about the Heidi
02:44:48 Allen investigation back when you were the undersheriff.
02:44:51 **A.** Okay.
02:44:51 **Q.** Now, you were in a position of authority over that
02:44:55 investigation as the undersheriff?
02:44:58 **A.** To the extent that the sheriff was the ultimate in
02:45:02 charge, I was second in charge, yes.
02:45:04 **Q.** Did you -- and you supervised a number of people in
02:45:07 your capacity as the undersheriff?
02:45:08 **A.** I did.
02:45:09 **Q.** Do you know how many people you were supervising
02:45:12 back then?
02:45:13 **A.** Well, it would depend on how many were at the
02:45:16 command post in -- back then I think we had about
02:45:20 fifty-five or sixty people.
02:45:23 **Q.** Now, in connection with the Heidi Allen
02:45:25 investigation, did you have regular meetings with the
02:45:28 District Attorney's Office concerning the leads and updates
02:45:31 regarding the investigation?

02:45:33 **A.** Not much.

02:45:34 **Q.** Not much?

02:45:36 **A.** Not much.

02:45:37 **Q.** Did you have any?

02:45:38 **A.** For a couple of days.

02:45:41 **Q.** And do you remember was it the beginning of the investigation?

02:45:44 **A.** It was at the beginning.

02:45:45 **Q.** And were you providing any updates whatsoever concerning the investigation to the DA's office?

02:45:52 **A.** Not much. I would -- I would give the updates to the sheriff when I spent most of the night or a couple nights out where the sheriff spent days there most of the time.

02:46:05 **Q.** So is it a fair statement to say that the investigation into the disappearance of Heidi Allen was one of the biggest cases in Oswego County history?

02:46:13 **A.** Oh, yes, absolutely.

02:46:14 **Q.** Now let me ask you this. In the early 1990s, what was the procedure in place for maintaining confidential informant files at the Oswego County Sheriff's Department?

02:46:26 MR. MOODY: Objection, Judge. I'm not sure that this witness would be -- would be -- if he didn't have supervisory role directly on confidential informants, we have established that.

02:46:37 THE COURT: If she asks the question was he familiar with the procedure, she can ask that question.

02:46:41 **Q.** Were you --

02:46:42 **A.** I don't know.

02:46:42 **Q.** You had no idea what the procedure was for signing?

02:46:45 **A.** I know what I did when I was in CID, but times change and procedures change, and what they were at that point in time, no, I let -- along with the sheriff, we let our subjectives run their departments and their divisions, and did I jump into the middle of how they were doing things? No.

02:47:09 **Q.** So you're saying when you were a part of the CID, and CID stands for criminal investigation department?

02:47:16 **A.** Yes, ma'am. Division.

02:47:17 **Q.** When you were working in the Criminal Investigation Division, were you familiar with what the procedure was for signing up a confidential informant?

02:47:26 **A.** We really didn't have one back then. When I was in CID we really didn't have one.

02:47:34 **Q.** Did you have any idea what they did to sign up a confidential informant?

02:47:40 MR. MOODY: I'm going to object to "they," and can we have a time frame?

02:47:43 THE COURT: Hold on. I'll sustain to form, and can we have who "they" are and a time frame please?

02:47:47 **Q.** When you were with the CI -- the Criminal Investigation Division, did you have any idea what the procedures were to sign up a confidential informant?

02:47:57 **A.** When I was in there, we didn't sign up people. We used people in different categories that would give us calls and give us information. Did we keep a recording of who they were? No, there was no procedure at that point in time.

02:48:16 **Q.** Okay, so just so I'm clear, is it your testimony that you're completely clueless as to how --

02:48:23 MR. MOODY: Objection, "clueless," Judge.

02:48:25 THE COURT: Sustained.

02:48:26 **Q.** Do you recall giving a statement to the media back on December seventh of 1994 concerning a confidential informant file and Heidi Allen?

02:48:43 **A.** No, I don't.

02:48:44 **Q.** I'm going to -- if I showed you an article that was from the Post-Standard, would that help refresh your recollection?

02:48:51 **A.** I'm sure it would.

02:48:53 **Q.** I'm going to hand you what's been marked as Defense Exhibit 4 and ask you to take a look at this document, and specifically on page two if you could, read that page and let me know if that refreshes your recollection about statements you made to the media.

02:49:23 (Whereupon, there was a pause in the
02:49:53 proceeding.)

02:49:53 **A.** I don't recall it but I guess it's there.

02:49:55 **Q.** Does that help refresh your recollection?

02:49:57 **A.** Yes, a little bit.

02:49:59 **Q.** And you mention an informant file.

02:50:04 **A.** Deputy VanPatten mentions an informant file. I
02:50:09 don't.

02:50:09 **Q.** Okay, I'll take that. Do you --

02:50:13 **A.** Unless I misread it.

02:50:17 **Q.** Did you state that there was no formal file because
02:50:25 Allen was not really an informant to the media?

02:50:30 **A.** I believe there -- can I see that again? Because I
02:50:34 think I was told that by -- by someone.

02:50:41 (Whereupon, there was a pause in the
proceeding.)

02:50:48 **A.** Where are you talking about, ma'am?

02:50:51 **Q.** (Indicating).

02:50:56 **A.** I said that we were standing by the past statements
02:51:02 that Allen had talked to investigators in 1992, but
02:51:06 Goodsell said the case did not involve Thibodeau. Doesn't
02:51:10 say I did.

02:51:11 **Q.** Does it say that Todd said Tuesday there's no formal
02:51:16 file because Allen was not really an informant. That's
02:51:19 what you told the media.

02:51:20 **A.** I can't hear you with your back to me, ma'am.

02:51:23 **Q.** You told the media that there was no formal file because Allen was not really an informant.

02:51:32 **A.** Because that is what I was told by the people in that agency.

02:51:36 **Q.** And that was your understanding when you were speaking with the media.

02:51:41 **A.** That's correct. That was my understanding due to the fact that my underlings had told me that, yes.

02:51:50 **Q.** Now, you also stated to the media on that day that she could have worked on a hundred files or one file because you noted that you had stuff in your mailbox from twenty years ago.

02:52:02 **A.** That's correct.

02:52:03 **Q.** Now, when you made that statement, you really had no idea whether Heidi Allen was involved in being an informant with a hundred cases or one case.

02:52:12 **A.** I knew -- the only thing I knew, just like I said, is the fact that those people that had the file told me that she was not an informant.

02:52:25 **Q.** When you say "those people," who are we talking about?

02:52:28 **A.** That would have been Sergeant Lortie and Lieutenant Goodsell.

02:52:31 **Q.** Now, were you ever made aware that her -- Heidi

02:52:36 Allen's index card had been dropped in the parking lot of
02:52:39 the D&W?

02:52:40 **A.** Yes, back in -- I think two years before this
02:52:43 happened.

02:52:43 **Q.** You were aware of that.

02:52:46 **A.** That -- of the card, yes.

02:52:47 **Q.** So you knew that there was an index card with her
02:52:54 pedigree information on it in 1992, you knew that.

02:52:58 **A.** I believe so, that it had been found, and we sent
02:53:02 someone out and picked it up, but there was -- it was no
02:53:05 big deal because nothing had happened there.

02:53:07 **Q.** Okay, so you -- you knew that there was an index
02:53:12 card with her name on it.

02:53:16 MR. MOODY: Objection. This has been asked
02:53:17 and answered now three times.

02:53:18 THE COURT: Sustained.

02:53:19 **A.** It's not an index card.

02:53:21 THE COURT: No, no, sheriff. The objection
02:53:22 was sustained.

02:53:23 THE WITNESS: Okay.

02:53:23 **Q.** What was your understanding as to what was found in
02:53:25 the parking lot in 1992?

02:53:27 **A.** A business card.

02:53:28 **Q.** A business card?

02:53:29 **A.** I believe so, with Chris VanPatten's name on it.

02:53:32 **Q.** And that's it as far as you're aware of?

02:53:35 **A.** I believe so.

02:53:36 **Q.** You weren't aware of any other information that was
02:53:39 dropped in the parking lot in 1992?

02:53:41 **A.** If I did, I forgotten it to be honest with you
02:53:45 because people drop business cards all the time, people
02:53:50 drop stuff, it happens.

02:53:52 **Q.** So just so I'm clear, your testimony is all you knew
02:53:59 about was Chris VanPatten's business card being dropped in
02:54:02 the parking lot at the D&W?

02:54:04 **A.** To the best of my recollection, that's all I
02:54:08 remember.

02:54:08 **Q.** Did you see any reports at all concerning anything
02:54:12 else that was dropped in the parking lot of the D&W?

02:54:15 **A.** There was -- there was probably a complaint card
02:54:20 with whoever found the card, and we sent somebody out to
02:54:25 pick it up, that's what I know. Was there any revelation?
02:54:30 No.

02:54:30 **Q.** What do you mean a complaint card?

02:54:32 **A.** We push complaint cards when we get a complaint.
02:54:37 It's so we have a file, and that's how we kept our records.
02:54:47 Yep, that's it.

02:55:43 **Q.** Now, Sheriff Todd, I'm going to hand you what's been
02:55:45 marked as Defense Exhibit 144 and ask if you can identify
02:55:49 what that is.

02:55:49 **A.** That's our complaint card with the index number for
02:55:53 the complaint.

02:55:53 **Q.** When's the first time you saw that card?

02:55:56 **A.** To be honest with you, I think about two or three
02:56:02 weeks ago.

02:56:03 **Q.** And who showed that to you?

02:56:06 **A.** Lieutenant Moskal.

02:56:10 **Q.** Where would that have been kept?

02:56:12 **A.** Well, either in the complaint file or in an index
02:56:19 file that we had for -- for complaints that we sometimes --
02:56:26 there's a certain amount of dates that we have that we have
02:56:29 to keep records by and we purge them sometimes, but because
02:56:32 of the type of information, that was probably put into the
02:56:36 Heidi Allen file, and I believe that's where it was found.

02:56:39 **Q.** That was found in the Sheriff's Department's Heidi
02:56:42 Allen file?

02:56:44 MR. MOODY: Objection, Judge. I think his
02:56:46 basis of knowledge would be in question. I think we're
02:56:48 getting --

02:56:49 THE COURT: Also he -- can you respond to Ms.
02:56:57 Peebles' question?

02:56:57 THE WITNESS: They told me they found it.

02:56:58 **Q.** But you don't know where they found it?

02:57:00 **A.** Not exactly, no, but it was in records we were
02:57:03 looking for.

02:57:03 MS. PEEBLES: I'd like to offer Defense
02:57:05 Exhibit 144.

02:57:07 MR. MOODY: No objection.

02:57:08 THE COURT: 144 is in without objection.

(Defendant's Exhibit No. 144 was received in
02:57:10 evidence).

02:57:10 **Q.** Now, you can look at that card, and what -- what
02:57:14 does that card note, Defense Exhibit 144?

02:57:18 **A.** First it was found property, the person's name that
02:57:23 found it, her address, the location where it was found, the
02:57:30 phone number from where she called, the officer that was
02:57:34 assigned, the store number. My eyes aren't as good as they
02:57:43 used to be. Complainant, and it was the description of
02:57:50 what it was and it was TOTd to Investigator VanPatten.

02:57:55 **Q.** And who called that complaint in?

02:57:58 **A.** Chris Duel.

02:57:59 **Q.** And what's the date of that document?

02:58:02 **A.** January twenty-third, 1992.

02:58:04 **Q.** And does it say anything on there about Heidi Allen?

02:58:07 **A.** No, ma'am.

02:58:10 **Q.** Now, when did you first become aware of items that
02:58:22 were dropped or the sheriff's card that was dropped in the
02:58:24 D&W parking lot if you recall?

02:58:27 **A.** To be honest I really -- I remember they showed this
02:58:32 to me about two or three weeks ago. I remember reading

02:58:37 about it and hearing about it in the previous trial.
02:58:42 That's it.

02:58:43 **Q.** Would that information have ever been broadcast over
02:58:48 the media around the time it was found in the parking lot?

02:58:50 **A.** I have no idea what the media broadcast. They have
02:58:53 their own rules.

02:58:54 **Q.** Well, would that be something that the Sheriff's
02:58:56 Department would have done in connection with any
02:58:59 confidential information that --

02:59:01 MR. MOODY: I'm going to object to "would have
02:59:03 done." Calls for speculation. He's already indicated
02:59:05 he's not familiar with the process.

02:59:07 THE COURT: I'm going to sustain the
02:59:08 objection.

02:59:09 **Q.** Now, as the undersheriff, who exactly were you
02:59:16 supervising and what were you supervising?

02:59:20 **A.** When?

02:59:21 MR. MOODY: Objection.

02:59:22 **Q.** When you were undersheriff back in the early
02:59:25 nineties.

02:59:25 MR. MOODY: Was this in relation to the
02:59:27 investigation or this relating to his job as a whole?

02:59:31 MS. PEEBLES: I'm asking as far as his job
02:59:32 duties.

02:59:32 THE COURT: So not specifically with regard to

02:59:33 this --

MS. PEEBLES: No.

02:59:34 THE COURT: -- investigation, okay.

02:59:35 **A.** I acted in the sheriff's place when the sheriff 02:59:39 wasn't available.

02:59:39 **Q.** And in what capacity would you be supervising the 02:59:42 deputies?

02:59:43 **A.** I wouldn't be.

02:59:44 **Q.** What were your day to day duties?

02:59:46 **A.** Whatever -- jeeze, there's so many. I oversaw the 02:59:55 civil, whatever major things come through. There were -- 03:00:04 in my position there as the undersheriff there are no set 03:00:07 duties. You act in, whenever the sheriff isn't available, 03:00:11 you act on.

03:00:12 **Q.** Now did you -- are you familiar with procedures and 03:00:14 protocols with which your -- the deputies were supposed to 03:00:18 be following?

03:00:19 **A.** In what --

03:00:20 **Q.** In general.

03:00:21 **A.** Pretty much. I mean not -- no, because I don't -- 03:00:28 neither Sheriff Nellis or myself micromanaged the 03:00:31 department. We had lieutenants and sergeants that handled 03:00:35 their people. Do we micromanage and read every report and 03:00:39 every piece of paper that comes through there? No.

03:00:42 **Q.** Let me ask you this. When you were told about

03:00:46 Sergeant Lortie's report in connection with Heidi Allen as
03:00:50 an informant, did you speak with Investigator Ralph
03:00:55 Scruton?

03:00:56 **A.** Not that I recall, no.

03:00:58 **Q.** Who would have been in charge of confidential
03:01:02 informant information back in the early nineties?

03:01:07 **A.** That would have been the lieutenant.

03:01:12 **Q.** And who would that have been?

03:01:13 **A.** I believe Lieutenant Scruton or Lieutenant Goodsell.
03:01:17 I'm not sure, I don't recall.

03:01:19 **Q.** Would both of them have been involved in that or
03:01:24 just one of them?

03:01:25 **A.** Every single investigator would have been involved
03:01:29 in it along with the lieutenant. You kept your own files.

03:01:35 **Q.** Who was in charge of the protocol or procedures for
03:01:42 signing up confidential informants back then?

03:01:44 MR. MOODY: Objection. Are we talking about
03:01:46 ninety-one, ninety-two?

03:01:49 **Q.** In the early nineties.

03:01:50 THE COURT: If you can answer, sir.

03:01:51 **A.** I don't believe we had any at that point in time,
03:01:55 that we had any protocols. The guys were responsible for
03:01:59 their own informants.

03:02:02 **Q.** So there was no file that was kept under lock and
03:02:05 key with regard to this information.

03:02:07 **A.** If they did, it was done by a lieutenant, not by me.
03:02:10 **Q.** Now, did you have a personal relationship with the
03:02:20 Allen family prior to her abduction?
03:02:22 MR. MOODY: I'm going to object to the
03:02:23 relevance of this.
03:02:24 THE COURT: What's the relevance to this?
03:02:26 MS. PEEBLES: Well, Your Honor, I think --
03:02:27 THE COURT: What's the relevance of this?
03:02:28 MS. PEEBLES: It's relevant in terms of Heidi
03:02:31 Allen being an informant and his knowledge concerning
03:02:34 what the family knew.
03:02:35 THE COURT: What family? Knew the Allens?
03:02:37 MS. PEEBLES: Heidi Allen's family.
03:02:39 THE COURT: How does Heidi Allen's family have
03:02:41 any relevance to any motive for anyone else to kidnap
03:02:45 their daughter?
03:02:45 MS. PEEBLES: Well, Your Honor, I think if
03:02:47 there is a personal relationship there, he would have
03:02:49 been communicating directly with regard to the
03:02:52 investigative steps that were taken during that time
03:02:55 period.
03:02:55 THE COURT: I'm going to sustain the
03:02:56 objection. I don't see it's relevant at all.
03:02:58 **Q.** During the course of the investigation, were you
03:03:02 made aware of leads that were coming throughout the course

03:03:06 of the investigation?

03:03:07 **A.** No.

03:03:09 **Q.** You were not?

03:03:10 **A.** No, ma'am.

03:03:11 **Q.** So you had no idea what was coming in and what was
03:03:14 going out?

03:03:16 MR. MOODY: I'm going to object, Judge. Now
03:03:17 we're getting argumentative and repetitive.

03:03:19 THE COURT: I'll allow that question but that
03:03:22 question only.

03:03:23 **A.** I went out on surgery. I was not there for the
03:03:25 investigation for the most part.

03:03:28 **Q.** Do you remember when you went out on surgery?

03:03:34 **A.** The Wednesday after the abduction.

03:03:36 **Q.** And then you didn't come back until after the trial?

03:03:39 **A.** Three -- no, three or four weeks later. By that
03:03:44 time I was so far behind Chuck was handling it and I
03:03:47 handled other stuff.

03:03:48 **Q.** And that would be Chuck Nellis?

03:03:50 **A.** That's correct.

03:03:51 **Q.** So just so I'm clear, you didn't really have any
03:03:55 involvement at all in the investigation of the
03:03:57 disappearance of Heidi Allen?

03:03:59 **A.** Very little.

03:04:01 **Q.** After June of 1995, did you or were you ever

03:04:09 provided with updates concerning various leads that were
03:04:12 coming in regarding the disappearance of Heidi Allen?

03:04:16 **A.** Yes.

03:04:16 **Q.** And do you have any recollection of what leads you
03:04:20 recall coming in after 1995?

03:04:22 MR. MOODY: I'm going to object as to the
03:04:24 relevance, his recollection of what leads. Talking
03:04:27 specific lead or specific person?

03:04:30 THE COURT: Let me first did you say June of
03:04:31 ninety-five, Ms. Peebles?

03:04:33 MS. PEEBLES: Yes.

03:04:34 THE COURT: Do you have specific leads in
03:04:35 mind?

03:04:35 MS. PEEBLES: I do.

03:04:36 THE COURT: Okay, can you just get right to
03:04:39 that.

03:04:39 MS. PEEBLES: Well -- yeah, sure. I'm trying
03:04:40 to establish a foundation that you were actually
03:04:43 getting some leads in after 1995. I'm trying to figure
03:04:46 out what his involvement was after ninety-five.

03:04:48 THE COURT: Okay, ask him that, okay?

03:04:50 **Q.** So you were getting leads. Who was providing you
03:04:53 with the leads?

03:04:54 **A.** The lieutenant would advise us, you know, if they'd
03:04:59 gotten a lead in, he would come up and say oh, we got this,

03:05:03 we got that, but can I tell you today what those leads were
03:05:06 twenty years ago? No.

03:05:06 **Q.** Were you still investigating the disappearance of
03:05:09 Heidi Allen after June of 1995?

03:05:12 **A.** Still am.

03:05:13 MR. MOODY: I'm going to object, Judge. When
03:05:15 she says "you," is she talking this witness or the
03:05:18 department?

03:05:19 MS. PEEBLES: I'm talking this -- the witness.

03:05:22 MR. MOODY: Can I finish? What I'm trying to
03:05:23 say, this witness or the department?

03:05:24 MS. PEEBLES: I'm asking him about him.

03:05:26 THE COURT: Okay, specifically ask the
03:05:28 questions about you, sir, were you still actively
03:05:30 investigating?

03:05:31 THE WITNESS: I still get advised, yes.

03:05:33 **Q.** Now, how often were you getting advised after June
03:05:38 of -- and you were still undersheriff at that time, am I
03:05:41 correct?

03:05:42 **A.** Yes.

03:05:42 **Q.** In June of 1995. When were you elected sheriff?

03:05:46 **A.** January one, ninety-nine.

03:05:50 **Q.** So between 1995 and 1999, how often were you having
03:05:59 meetings or discussions concerning Heidi Allen's case?

03:06:03 MR. MOODY: I'm going to object, Judge.

03:06:04 What's the relevance to this motion?

03:06:06 THE COURT: Yeah. I'm confused as to the
03:06:07 relevance of this motion as well, Ms. Peebles.

03:06:09 MS. PEEBLES: Well, I'm trying to establish
03:06:11 the foundation with regards to the lead.

03:06:12 THE COURT: Ask him that then.

03:06:15 **Q.** Well, all right. When you were sheriff in the year
03:06:16 2000, were you informed of a lead that came through by a
03:06:20 gentleman named Tyler Hayes?

03:06:22 MR. MOODY: I'm going to object, Judge. Mr.
03:06:24 Hayes has testified. What is his knowledge or lack
03:06:27 thereof have anything to do it.

03:06:29 THE COURT: I'll allow it as to whether or not
03:06:31 he knew anything about Mr. Hayes. I'll allow it.

03:06:33 **A.** Do I recall it? No. They might have told me, but I
03:06:36 would have just told them follow through on it. Does the
03:06:39 name ring a bell to me? No.

03:06:41 **Q.** I guess that's my question. When they -- when
03:06:43 they -- when you were provided with various leads or
03:06:46 information, what was your role, what did you do, once you
03:06:49 were provided with the leads, the information?

03:06:51 **A.** My goal was to find Heidi Allen and that was to
03:06:54 follow up on every lead that we possibly could.

03:06:58 **Q.** Were you aware of a lead that said, "Heidi Allen is
03:07:02 a snitch" that was etched in the bathroom wall along the

03:07:05 thruway in June of 1995?

03:07:07 **A.** No, I don't -- I remember seeing a lot of things etched on the bathroom walls, but I didn't see that one.

03:07:14 **Q.** Did you know whether or not that that was a lead that was provided to the Sheriff's Department?

03:07:18 MR. MOODY: I'm going to object, Judge. What's the relevance of his knowledge of specific lead to this motion?

03:07:24 THE COURT: Ms. Peebles, can you respond to that relevance issue?

03:07:27 MS. PEEBLES: Well, yes, Judge. It goes directly to her status as a confidential informant, and in June of 1995 there was a lead etched in the bathroom wall on the thruway, and I'm asking this witness about his knowledge concerning that.

03:07:38 THE COURT: He said he didn't know.

03:07:42 MS. PEEBLES: Well, he objected.

03:07:43 THE COURT: I'll allow the answer to stay, to stand.

03:07:46 **Q.** And it's your testimony that you had no knowledge about that lead.

03:07:51 **A.** They may have told me verbally, but do I have any information on it? No.

03:07:58 **Q.** Were you in charge of the procedures for creating

03:08:08 lead sheets or lead logs?

03:08:10 **A.** No.

03:08:10 **Q.** Who came up with the procedure?

03:08:12 **A.** Terry Whipple.

03:08:14 THE COURT: Who's that? Terry Whipple?

03:08:16 THE WITNESS: Investigator Terry Whipple,
03:08:20 W-H-I-P-P-L-E.

03:08:22 **Q.** Were any investigators told to omit information from
03:08:25 lead sheets?

03:08:27 **A.** Never.

03:08:27 MR. MOODY: I'm going to object, Judge.

03:08:28 THE COURT: I'll allow it.

03:08:30 **Q.** Did you require investigators to write reports if
03:08:32 they were interviewing potential suspects?

03:08:34 MR. MOODY: I'm going to object. Now we're
03:08:37 getting into leading questions as well.

03:08:38 THE COURT: Sustained.

03:08:39 **Q.** Well, let me ask you this. What was the procedure
03:08:41 in place when an investigator was interviewing a potential
03:08:45 suspect?

03:08:47 **A.** They would get assigned to go out and interview
03:08:54 these people, would write a report if it was relevant. If
03:08:59 it pertained to something that had absolutely no relevance
03:09:04 to the case, something that happened ten, fifteen years ago
03:09:07 that involved an auto accident or something, no, we didn't
03:09:11 write a report.

03:09:13 **Q.** Now, I want to bring you up to the year 2013 in
03:09:26 February. Were you advised regarding a lead from an
03:09:30 individual named Tonya Priest?
03:09:35 **A.** I think the lieutenant was. I was notified by the
03:09:38 lieutenant.
03:09:39 **Q.** And what involvement did you have in terms of that
03:09:44 particular lead?
03:09:45 **A.** None.
03:09:45 **Q.** Were you provided any information concerning Tonya
03:09:51 Priest and what she had to offer?
03:09:53 **A.** The lieutenant would keep me advised on what she had
03:09:57 testified to, and every time she changed that story, he
03:10:02 would advise me of it.
03:10:03 **Q.** Were you aware of an audio recorded phone call
03:10:06 between Jennifer Wescott and Tonya Priest?
03:10:09 **A.** I was.
03:10:10 **Q.** Did you listen to it?
03:10:11 **A.** No, ma'am.
03:10:12 **Q.** Have you ever listened to it?
03:10:13 MR. MOODY: Judge, I'm going to object to the
03:10:15 relevance. This -- what this witness -- what is the
03:10:17 relevance of what this witness knew or didn't know with
03:10:20 regard to --
03:10:22 THE COURT: Well, the answer to the question
03:10:24 is allowed to stand, but the followup question is

03:10:26 already -- he already said he didn't know about it, he
03:10:29 didn't listen to it.

03:10:30 **Q.** How about the interview with Jennifer Wescott, did
03:10:33 you ever listen --

03:10:33 MR. MOODY: I'm going to object again, Judge.
03:10:35 What does this witness's knowledge of that particular
03:10:38 piece of information have to do with this motion?

03:10:40 THE COURT: Ms. Peebles?

03:10:41 MS. PEEBLES: Your Honor, he is the head of
03:10:42 the Oswego County Sheriff's Department, in charge of
03:10:45 this investigation, and the DA's Office themselves has
03:10:47 called into question the integrity of this
03:10:49 investigation during the pendency of this motion. I
03:10:51 think it's relevant.

03:10:52 MR. MOODY: So the whole purpose then is to
03:10:55 embarrass the sheriff? I thought that's what we said
03:10:57 this wasn't about.

03:10:58 MS. PEEBLES: I'm not here to embarrass the
03:11:00 sheriff.

03:11:01 THE COURT: I don't see how this relates to
03:11:02 the Heidi Allen issue or the overall investigation
03:11:05 which we've discussed before. I'm going to sustain the
03:11:08 objection.

03:11:09 **Q.** So you personally never spoke to either Tonya Priest
03:11:19 or Jennifer Wescott?

03:11:20 **A.** No, ma'am.

03:11:20 **Q.** And do you know whether or not a lead number was assigned to either Jennifer Wescott or Tonya Priest?

03:11:30 MR. MOODY: Objection, Judge, what -- the relevance of whether a lead number was assigned. What does that have to do with this motion?

03:11:36 THE COURT: Has to do with the motion because of the investigation. I'll allow it.

03:11:40 **A.** I'm assuming there was but I don't know, no.

03:11:48 **Q.** Now, you were aware that there was information about a cabin somewhere in the Parish area, you became aware of that at some point?

03:12:03 **A.** Yes, ma'am.

03:12:03 **Q.** And what efforts did you take to search for a cabin between February of 2013 and June of 2013?

03:12:11 MR. MOODY: Objection. Are we talking about what this witness did or what the department did?

03:12:16 THE COURT: I'm assuming based on prior questions, what this witness did, right?

03:12:20 MS. PEEBLES: Yes.

03:12:20 **A.** I wasn't involved. I allowed my people, that is their job. My job is not to go out investigate cases, my job is to supervise and make sure that they went out and did their job and they did.

03:12:32 **Q.** And did you -- were you provided updates with regard

03:12:36 to what they did?

03:12:37 **A.** I was.

03:12:37 **Q.** And could you tell me what -- what they did?

03:12:41 MR. MOODY: Objection, Judge, to what the 03:12:42 updates said. We're here to determine -- this is again 03:12:45 a relevance question. What this witness knew or didn't 03:12:47 know about a specific issue is irrelevant as a motion.

03:12:50 MS. PEEBLES: I don't know why the head of the 03:12:52 Sheriff's Department testimony would be irrelevant in 03:12:55 terms of the investigation of this case. I think it's 03:12:59 relevant.

03:12:59 MR. MOODY: Because A, it's hearsay, and B, 03:13:01 it's what he did or didn't do personally, and he said 03:13:04 he didn't have involvement with the day to day 03:13:06 operation.

03:13:07 THE COURT: I'm going to sustain the 03:13:10 objection.

03:13:11 **Q.** Were you ever provided with any information 03:13:13 concerning any cabins in the Parish area --

03:13:17 MR. MOODY: Objection. Any information they 03:13:19 provide, that would also be based on hearsay.

03:13:21 THE COURT: Sustained.

03:13:22 **Q.** At the end of June of 2013, what was the Sheriff's 03:13:28 Department's status of the investigation against Jay Steen?

03:13:32 MR. MOODY: Objection. To which

03:13:33 investigation?
03:13:36 MS. PEEBLES: The Heidi Allen investigation.
03:13:38 MR. MOODY: He was arrested for murder. I
03:13:40 don't know if that was the investigation you were
03:13:41 talking about.
03:13:42 THE COURT: Mr. Moody, I think we can all
03:13:44 understand what investigation she was talking about.
03:13:46 MR. MOODY: Then basis of knowledge as to
03:13:49 personally aware of anything.
03:13:50 THE COURT: Foundation. I think foundational
03:13:53 questions are fine.
03:13:53 **A.** What was the question again?
03:13:54 **Q.** So the question is you were being provided updates
03:13:57 according to your testimony between February of 2013 and
03:14:01 June of 2013 with regard to a woman named Tonya Priest,
03:14:06 right?
03:14:06 **A.** Yes.
03:14:07 **Q.** They were your deputies or your investigators.
03:14:11 Investigators were reporting to you concerning what they
03:14:15 were doing as a followup to this investigation, is that a
03:14:17 fair statement?
03:14:17 **A.** That is correct.
03:14:17 **Q.** Okay, now, by the end of June of 2013, what was your
03:14:23 understanding with regard to the investigation regarding
03:14:26 James Steen if you know?

03:14:30 **A.** I know they went --

03:14:31 MR. MOODY: Objection. That would be based on hearsay, Judge, unless he personally did something.

03:14:37 MS. PEEBLES: Well, it goes to his state of mind and what he believed as far as where the investigation was.

03:14:42 THE COURT: I'll allow it.

03:14:43 **A.** I know that they went I believe to where he was incarcerated. I believe they talked with him. Whether it was that date or another date, I know they did, and he denied any knowledge of it.

03:14:56 **Q.** And now my question is what was your understanding regarding the investigation against James Steen in June of 2013? Case closed?

03:15:07 MR. MOODY: Judge, the relevance of what his understanding of the investigation was.

03:15:11 THE COURT: Do you mean the status of the investigation?

03:15:12 MS. PEEBLES: The status of the investigation against James Steen.

03:15:15 THE COURT: He just answered the question. I'll sustain it.

03:15:19 **Q.** At the end of June of 2013, I believe -- well, strike that.

03:15:25 MS. PEEBLES: Again, Judge, what I think the

03:15:26 witness testified to is that they went and talked to
03:15:29 him, he denied knowledge. That doesn't tell me what
03:15:31 his understanding of the status of the investigation
03:15:35 was in June of 2013.

03:15:36 THE COURT: Ask him if you want what his
03:15:38 understanding of the status of the investigation was at
03:15:40 that time.

03:15:40 **A.** Anything involving Heidi Allen is open which
03:15:45 includes James Steen, Breckenridge, any one of these people
03:15:50 that -- these twenty, thirty, forty people that she has
03:15:54 brought up is always open, and Heidi Allen will always be
03:15:58 open. As long as I am sheriff, that case will always be
03:16:02 open until I bring her home.

03:16:06 **Q.** Do you know a gentleman by the name of William
03:16:10 Pierce?

03:16:10 **A.** I do now. I know the name.

03:16:13 MR. MOODY: Objection.

03:16:14 THE COURT: Mr. Moody, let her ask the
03:16:15 question. Go ahead, sheriff.

03:16:18 THE WITNESS: I know him by name now.

03:16:21 **Q.** When's the first time you have ever had contact with
03:16:24 him?

03:16:26 **A.** I don't know. A while ago he called the office and
03:16:33 I assigned him to an investigator to go talk to.

03:16:37 **Q.** Did you have any contact with him after that initial

03:16:40 conversation with him?

03:16:41 **A.** No, ma'am.

03:16:43 **Q.** I'm going to hand you what's been marked as Defense
03:16:46 Exhibit 132 and ask if you can identify what's depicted on
03:16:49 this photograph.

03:16:52 **A.** That's Richard Thibodeau's van.

03:16:55 **Q.** And that's still in the sheriff's custody to this
03:16:57 day?

03:16:58 **A.** Yes, ma'am.

03:16:59 MS. PEEBLES: Your Honor, I'd like to offer
03:17:00 Defense Exhibit 132.

03:17:04 THE COURT: Any objection?

03:17:05 MR. MOODY: No objection.

03:17:06 THE COURT: 132 is in without objection.

(Defendant's Exhibit No. 132 was received in
03:17:09 evidence).

03:17:09 MS. PEEBLES: I have no further questions.

03:17:10 THE COURT: I'm sorry, I didn't hear the last
03:17:12 question. Did you say it's still in the custody of the
03:17:15 Sheriff's Department?

03:17:15 MS. PEEBLES: Yes.

03:17:16 THE COURT: Your answer, sir, was what? It
03:17:18 is?

03:17:18 THE WITNESS: It is.

03:17:18 THE COURT: Thank you. Mr. Moody?

03:17:35 CROSS-EXAMINATION
03:17:36 BY MR. MOODY:
03:17:36 **Q.** Sheriff, you mentioned that you went out for surgery. What kind of surgery was that?
03:17:44 **A.** Knee.
03:17:44 **Q.** In ninety-four.
03:17:44 **A.** Knee.
03:17:45 **Q.** Knee surgery, and you were out for how long?
03:17:47 **A.** I think my return date was the nineteenth or the twentieth, somewhere in there.
03:17:53 **Q.** Of what month, year?
03:17:55 **A.** April, the same month.
03:17:59 **Q.** And you testified that -- that on the basis of that, you felt yourself were so far behind that you didn't have any personal involvement then in the investigation after that?
03:18:08 **A.** That's correct.
03:18:09 **Q.** And it was to your understanding that Sheriff Nellis was being either briefed or updated regularly?
03:18:17 **A.** We would, yes.
03:18:18 **Q.** Now, you mentioned that you were in CID at some point in time. When were you in CID?
03:18:24 **A.** Seventy-eight to eighty-four I believe it was.
03:18:29 **Q.** And so that would have been the period of time that you were aware of whatever procedures there were for,

03:18:35 quote, unquote, "informants," is that accurate?

03:18:37 **A.** That's correct.

03:18:38 **Q.** Now, fair to say that there are different types of
03:18:42 informants?

03:18:43 **A.** There are.

03:18:44 **Q.** There are people who as a confidential informant go
03:18:47 and make a drug buy, is that accurate?

03:18:50 **A.** That's correct.

03:18:50 **Q.** And confidential informant could also be someone who
03:18:53 just provides information on a confidential basis, is that
03:18:55 accurate?

03:18:56 **A.** That's correct.

03:18:57 **Q.** Now, back in -- newspaper articles still up with
03:19:10 you?

03:19:10 **A.** No. I don't have any newspaper articles.

03:19:19 THE COURT: Do you still have them, Ms.
03:19:20 Peebles?

03:19:22 MS. PEEBLES: (Handing).

03:19:24 **Q.** Back when you talked to the Post-Standard in
03:19:27 Exhibit 4, just showing you that to refresh your
03:19:30 recollection, where was your knowledge about Heidi Allen's
03:19:32 status coming from?

03:19:34 **A.** Lieutenant Goodsell I believe it was.

03:19:36 **Q.** Okay, now Lieutenant Goodsell at the time was the
03:19:39 head of the Criminal Investigations Division?

03:19:42 **A.** I believe so, yes.

03:19:42 **Q.** Was there also something called an ACT Team in the early nineties, say eighty-nine to ninety-three?

03:19:47 **A.** There was.

03:19:48 **Q.** What was the purpose of the -- what was your understanding of what the ACT Team did?

03:19:53 **A.** They were -- it was an anticrime team, and areas where we were having problematic problems that -- burglaries, drug areas, we would -- they would get assigned to it and try to put more people into that area in a surveillance or develop leads as they could.

03:20:21 **Q.** And were they -- were the people that were involved in the ACT Team, would they have been patrol deputies or would they have been CID deputies?

03:20:30 **A.** Patrol.

03:20:31 **Q.** Patrol? So the head of the ACT Team then would not have been Lieutenant Goodsell, is that accurate?

03:20:36 **A.** That's correct.

03:20:37 **Q.** It would have either been at the time Sergeant Lortie for a period of time and then Sergeant Lighthall in from say 1990 to 1993?

03:20:46 **A.** I'm assuming, yes, those were the two that were.

03:20:48 **Q.** And at some point in time in the -- in late ninety-one or early ninety-two, I believe that Sergeant Lighthall had a serious accident and went out off duty for

03:20:59 awhile, is that accurate?

03:21:01 **A.** That's correct.

03:21:01 **Q.** And that's when Sergeant Lortie was put in charge of 03:21:05 the ACT Team?

03:21:05 **A.** That's correct.

03:21:06 **Q.** Now, you were asked some questions about what the 03:21:18 procedure was with regard to when a witness or suspect was 03:21:22 interviewed. Do you remember those questions by Ms. 03:21:25 Peebles?

03:21:25 **A.** Yes.

03:21:26 **Q.** And what the procedure was? That was -- the 03:21:28 determination about the importance of the material was left 03:21:33 to the individual investigator, is that what I understand?

03:21:37 **A.** That's correct.

03:21:37 **Q.** So if the investigator thought it was important, he 03:21:39 might write a full report or -- or more on the lead sheet 03:21:43 than if he thought the information was irrelevant, is that 03:21:46 accurate?

03:21:46 **A.** Pretty much, yes.

03:21:47 **Q.** Now, I'm looking for the punch card. Yes, you have 03:22:13 that. Exhibit 144. Showing you that. If you could look 03:22:16 on the back of that. Do you recognize what's written on 03:22:21 the back there?

03:22:23 **A.** The initials.

03:22:24 **Q.** Do you know whose initials those are?

03:22:26 **A.** John Francis Cox.

03:22:28 **Q.** And who is John Francis Cox?

03:22:30 **A.** He was a sergeant with our department at the time.

03:22:32 **Q.** Okay, and why would Sergeant Cox have initialed that particular document?

03:22:38 **A.** He would get the complaint cards in the morning, go through, sort them and put them in order.

03:22:45 **Q.** Okay. Now a complaint card, how is a complaint card generated back in ninety-one and ninety-two?

03:22:52 **A.** Well, it was before 911, so the call would come in to our office, sergeant would take the card, punch the time that it was received, when it was dispatched, the time would be stamped on there when he arrived at the complaint, the -- whoever was assigned to it and when he completed the complaint.

03:23:13 **Q.** Okay, so and when you say that was before 911, you're talking about the emergency system not the tragedy in New York.

03:23:21 **A.** That's correct.

03:23:22 **Q.** Just be clear. Now with regard to Exhibit 144, does that say -- it says it was TOTd to VanPatten you indicated. Does it say one way or the other who responded to pick up this found property?

03:23:37 **A.** One one three four.

03:23:40 **Q.** And do you know who that might have been?

03:23:41 **A.** No, I don't. It's a long time ago.

03:23:45 **Q.** Now what is one one three four, is that -- is that some type of identification number?

03:23:50 **A.** Yes, it is.

03:23:50 **Q.** And what kind of -- is it a badge number or what kind of identification number is it?

03:23:56 **A.** It's their employment number.

03:23:57 **Q.** Employment? Now, it indicates here that it was -- it was responded to on I believe you said July twenty-third of ninety-two, or January twenty-third of ninety-two?

03:24:14 **A.** January twenty-third, ninety-two, yes.

03:24:17 **Q.** Okay, does the brief description indicate when that found property was located?

03:24:27 **A.** Where it was found?

03:24:32 **Q.** What -- when, not where, when.

03:24:35 **A.** No, it doesn't say when that was found.

03:24:37 **Q.** Okay, all right. And but and then you mentioned that it was -- it was -- where was it located, does it say that, or where was it found?

03:24:47 **A.** At the D&W Store.

03:24:49 **Q.** Okay, does it say the D&W Store or does it give the address?

03:24:54 **A.** Gives the address. It says the D&W Store and the address.

03:24:57 **Q.** It says both?

03:24:57 **A.** Says both.

03:24:58 **Q.** And the address is what?

03:24:58 **A.** 104 and 104B.

03:25:01 **Q.** And that is where the D&W Store is located?

03:25:03 **A.** Yes, sir.

03:25:03 **Q.** Now, you were asked some questions about the -- when 03:25:43 the punch card was located and where it was located. You 03:25:48 said you first became aware of that in -- a couple weeks 03:25:51 ago?

03:25:53 **A.** I believe so.

03:25:54 **Q.** You have to answer yes or no for her.

03:25:55 **A.** Yes.

03:25:56 **Q.** When did the Sheriff's Department stop using this 03:25:59 punch card system?

03:26:01 **A.** When the nine one -- I can't give you an exact date, 03:26:04 when nine -- the 911 system took over and started doing the 03:26:08 dispatches and the receiving of the calls.

03:26:10 **Q.** Okay, would that have been before or after Easter of 03:26:16 1994?

03:26:16 **A.** I don't recall.

03:26:19 **Q.** And the punch cards then were -- are still as far as 03:26:25 you know based on this still in the possession of the 03:26:27 Sheriff's Department?

03:26:28 **A.** Yes, sir.

03:26:28 **Q.** Are there a lot of them?

03:26:30 **A.** From back then, some have been destroyed because of the time and date, but there are a lot of them, yeah.

03:26:39 **Q.** And you didn't look, you didn't -- personally didn't go look for this punch card, is that accurate?

03:26:44 **A.** That's accurate.

03:26:46 **Q.** Now you mentioned that you were being occasionally updated on various information since 1995, June of ninety-five, about the various leads that may have come in, do you remember those questions?

03:27:04 **A.** Yes.

03:27:04 **Q.** Are you being updated on every lead that comes in?

03:27:08 **A.** No.

03:27:08 **Q.** Who would make the determination about whether you should be updated or not?

03:27:12 **A.** Whether the sheriff was there or whether I was there it would have been. It would depend.

03:27:17 **Q.** How about after you became sheriff?

03:27:18 **A.** It would be either myself or the undersheriff again. We're not always both in the office.

03:27:23 **Q.** Well, let me -- maybe you're misunderstanding my question. A lead comes in. Who makes the determination whether or not it's going to be -- you're going to be told about it?

03:27:33 **A.** The lieutenants.

03:27:34 **Q.** The lieutenant of the CID or --

03:27:36 **A.** CID normally.

03:27:38 **Q.** Now, you were asked about some information regarding
03:27:48 how the file, the lead logs and lead sheets were -- were
03:27:53 set up, and you said that Investigator Whipple set up the
03:27:58 procedure that these -- that this file was -- was
03:28:01 organized?

03:28:01 **A.** He did.

03:28:02 **Q.** Okay, when did -- if you know, when did Investigator
03:28:05 Whipple retire?

03:28:07 **A.** 2003 maybe. I don't -- we have a lot of people that
03:28:12 we hire retire so I really don't --

03:28:26 MR. MOODY: I have nothing further, Judge.

03:28:28 MS. PEEBLES: Just a couple quick followups.

03:28:30 THE COURT: Remember we're running out of
03:28:32 time.

03:28:32 MS. PEEBLES: Yes, I just got a couple
03:28:34 questions.

03:28:34 THE COURT: Thank you.

REDIRECT EXAMINATION

03:28:41 BY MS. PEEBLES:

03:28:41 **Q.** Now you testify that there was a protocol in place
03:28:44 for property that's found?

03:28:52 **A.** No. I said for complaint cards.

03:28:54 **Q.** The complaint cards, I'm sorry. So what's the
03:28:57 protocol if there is a breach of someone's identification

03:29:02 as a confidential informant?

03:29:04 **A.** I can't hear you with your back to me.

03:29:07 **Q.** I'm sorry. What's the protocol if there's a breach
03:29:11 of someone's identification as a confidential informant?

03:29:15 **A.** To be honest with you, we've never had it happen.

03:29:19 **Q.** So as far as you know, no one's identity as a
03:29:22 confidential informant has ever been breached.

03:29:25 **A.** That's correct.

03:29:26 **Q.** And looking at Exhibit 144 if you will, can you read
03:29:34 what, on the front of that, what property was recovered,
03:29:39 what does it say on Exhibit 144?

03:29:46 **A.** Belongs to something OSCD person.

03:29:58 **Q.** Does it say property?

03:30:01 **A.** Property was found in parking lot above on possibly
03:30:08 belongs to a something that I can't read, Oswego OCSD
03:30:15 person.

03:30:15 **Q.** It doesn't say business card, it says property.

03:30:18 **A.** That's correct.

03:30:22 MS. PEEBLES: No further questions.

03:30:25 THE COURT: Mr. Moody?

RECROSS-EXAMINATION

03:30:28 BY MR. MOODY:

03:30:28 **Q.** That section you were reading, is there a -- there's
03:30:33 a section in there appears to be some numbers. Do you see
03:30:36 that right in the middle of that? That section, no, right

03:30:40 down here where you were reading where the property, and
03:30:42 then says above, can you read those numbers on there?

03:30:45 **A.** Above on zero-one twenty-two ninety-two.

03:30:51 **Q.** Would that be the date then that this property was
03:30:54 found?

03:30:54 **A.** I would believe so, yes.

03:30:56 **Q.** Thank you.

03:30:57 MR. MOODY: No further questions.

03:31:01 MS. PEEBLES: I have no further questions,
03:31:03 Judge.

03:31:03 THE COURT: Okay, sheriff, you can step down.
03:31:05 Thank you.

03:31:05 THE WITNESS: Thank you. Have a nice day.

03:31:08 THE COURT: Logistically do we start another
03:31:13 one or wait?

03:31:13 MS. PEEBLES: I think we can wait till
03:31:16 Thursday.

03:31:17 THE COURT: Makes sense. We have to be done
03:31:19 in twenty-seven minutes. Any objection from the
03:31:21 People?

03:31:23 MR. OAKES: No, Your Honor.

03:31:23 THE COURT: Doesn't make sense to have you end
03:31:25 halfway through your direct.

03:31:26 MS. PEEBLES: I think that makes sense, Judge.

03:31:28 THE COURT: Court's in recess till Thursday

03:31:30 morning at nine o'clock.

03:31:38 (Whereupon, there was a pause in the
03:32:12 proceeding).

03:32:12 THE COURT: Ms. Peebles, do you move
03:32:16 Defendant's Exhibit 138 in evidence?

03:32:18 MS. PEEBLES: Yes, Judge.

03:32:21 MR. OAKES: No objection from the People.

03:32:22 THE COURT: Defense Exhibit 138 is in.

(Defendant's Exhibit No. 138 was received in evidence).

(Conclusion of Proceeding).

* * *

C E R T I F I C A T E

I, JENNIFER ADYDAN, an Official Court Reporter in and for the State of New York, Fifth Judicial District, do hereby certify that the foregoing is a true, complete and accurate transcript of my stenographic notes taken in the above-entitled matter and the whole thereof to the best of my ability.

Jennifer Adydan

Jennifer Adydan
Official Court Reporter

DATED: February 19, 2015

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF OSWEGO: CRIMINAL TERM:

---------------------------------------x

THE PEOPLE OF THE STATE OF NEW YORK

Indict. No.
94C-0161

HEARING
VOLUME 7

- against-

GARY THIBODEAU,

Defendant.

---------------------------------------x

Oswego County Courthouse
25 E. Oneida Street
Oswego, NY 13126

DATE: February 5, 2015

Before:

HONORABLE DANIEL R. KING
Acting County Court Judge

Appearances:

GREGORY S. OAKES, ESQ.
District Attorney, Oswego County
MARK M. MOODY, ESQ.
Chief Assistant District Attorney

OFFICE OF THE FEDERAL PUBLIC DEFENDER
BY: LISA PEEBLES, ESQ., Public Defender
RANDI JUDA BIANCO, ESQ., Assistant Public Defender

Defendant is present

08:41:40

08:41:40

INDEX TO WITNESSES

	Direct	Cross	Redirect	Recross
FOR THE PEOPLE:				
None				
FOR THE DEFENDANT:				
Christopher Combes	1128	1133	1138	--
Jessica Howard	1141	1159	1174	--
Jonathan Barkley	1178	1184	1190	--
Deborah Vecchio	1192	1209	1235	--
Jessica Howard	1242	1245 (voir dire)		--
Carmen Rojek	1258	--	--	--

INDEX TO EXHIBITS

	Identification	Evidence
FOR THE PEOPLE:		
FFF. Photo	1230	1232
GGG. Photo	1230	1232
HHH. Photo	1230	1232
FOR THE DEFENDANT:		
84. Darcy Russell lease	--	1195
86. Photo Jennifer Wescott	--	1201
87. Photo Roger Breckenridge	--	1209
145. Photo (group)	1242	--

09:03:57 THE COURT: Next witness, Ms. Peebles.

09:03:58 MS. PEEBLES: Chris Combes.

09:04:00 THE CLERK: Raise your right hand.

CHRISTOPHER COMBES, Called as a witness,
having been duly sworn, was examined and testified as
09:04:05 follows:

09:04:05 THE CLERK: Please state your name for the
09:04:07 record.

09:04:07 THE WITNESS: Christopher L. Combes.

09:04:09 THE CLERK: Spell your last name.

09:04:09 THE WITNESS: C-O-M-B-E-S.

09:04:15 THE COURT: Mr. Combes, before we start, do
09:04:17 you consent to have your testimony video and audio
09:04:19 taped?

09:04:20 THE WITNESS: I'd rather not.

09:04:21 THE COURT: Make sure everybody understands
09:04:22 this because there is a concern. If the witness does
09:04:25 not wish to be videoed or audioed, there is no still
09:04:29 pictures by the media. Let me make it clear. No still
09:04:32 pictures by anybody in the audience. Everybody
09:04:35 understand that? Okay, thank you.

DIRECT EXAMINATION

09:04:38 BY MS. PEEBLES:

09:04:39 **Q.** Good morning, Mr. Combes.

09:04:41 **A.** Good morning.

09:04:41 **Q.** How old are you?

09:04:43 **A.** Thirty-four.

09:04:43 **Q.** Do you reside in Oswego County?

09:04:45 **A.** Yes.

09:04:45 **Q.** How long have you lived in Oswego County?

09:04:47 **A.** Thirty-four years.

09:04:48 **Q.** What do you do for a living?

09:04:49 **A.** Paving contractor.

09:04:52 **Q.** How long have you been working as a paving contractor.

09:04:56 **A.** Since I was eighteen.

09:04:57 **Q.** Who owns the company?

09:04:59 **A.** My brother Heath.

09:05:00 **Q.** I want to ask you some questions about an individual named Roger Breckenridge. Do you know Roger Breckenridge?

09:05:08 **A.** Yes.

09:05:09 **Q.** When did you first meet Roger Breckenridge to the best of your recollection?

09:05:13 **A.** Early two-thousands.

09:05:16 **Q.** And how did you meet him? What were the circumstances under which you met Roger Breckenridge?

09:05:21 **A.** I was working paving a parking lot for Dunkin Donuts on the east side here in Oswego, and Roger comes strolling up looking for a job, and we needed the help so we ended up hiring him on.

09:05:38 **Q.** And was he working full time or part time or was it
09:05:43 sporadic?
09:05:44 **A.** Very sporadic.
09:05:46 **Q.** When Roger Breckenridge was working with you at
09:05:50 Heath Paving, did he ever mention Heidi Allen?
09:05:53 **A.** While we were working, no. We did have a -- I don't
09:05:59 know, I shouldn't say conversation, but he did bring her
09:06:02 name up.
09:06:03 **Q.** When was that?
09:06:05 **A.** We were at our shop, Heath Paving shop, and I think
09:06:10 we were changing some tires or something and he had
09:06:14 mentioned her name.
09:06:15 **Q.** Was anyone else present other than you?
09:06:18 **A.** Not that I can recall.
09:06:19 **Q.** What did Roger Breckenridge say about Heidi Allen?
09:06:24 THE COURT: Before you answer that question,
09:06:26 same standing objection?
09:06:28 MR. OAKES: Yes, Your Honor.
09:06:28 THE COURT: That we talked about throughout
09:06:29 this whole proceeding, hearsay, as to whether or not it
09:06:33 falls under the exception, correct?
09:06:34 MS. PEEBLES: Yes, Judge.
09:06:35 THE COURT: I want to make sure we understand
09:06:37 that. You can answer the question now.
09:06:39 **A.** I don't know how it came about. My relationship

09:06:43 with Roger wasn't a friendship, it was more of a business-related thing, and you try and keep the two separate, and for some reason, and I don't know if he was trying to get off his chest or --

09:06:59 MR. OAKES: Objection, Your Honor.

09:07:00 THE COURT: Sustained.

09:07:05 **A.** I don't think he was admitting to it, but he definitely said the name Heidi Allen.

09:07:10 **Q.** What did he say?

09:07:11 **A.** In the words of saying, "We chopped her up, we put her in a wood stove and put her in a vehicle and sent her to Canada."

09:07:20 **Q.** Did you ever report this to law enforcement?

09:07:24 **A.** At the time, no.

09:07:25 **Q.** Did you eventually report it to law enforcement?

09:07:29 **A.** Yes.

09:07:29 **Q.** When was that?

09:07:30 **A.** This summer.

09:07:33 **Q.** And why did you?

09:07:35 **A.** Because I had a friend of mine that's in the Sheriff's Department, and at the time they were up in Parish or wherever it was that they were doing an investigation with the cabins, and he was one of the officers that had to set out in the woods at two o'clock in the morning by himself, so I mentioned to him that I really

09:07:57 didn't want to be involved into it, and I didn't take
09:08:00 Roger's words, I didn't take it credibly, and I -- I told
09:08:08 him what Roger had said. Well, the officer went back and
09:08:13 told one of the investigators and the investigator called
09:08:16 me and that's when I told him.

09:08:17 **Q.** Do you remember when that was?

09:08:21 **A.** Could have been in July. I'm assuming it was July.

09:08:24 **Q.** July of 2014?

09:08:26 **A.** Yes.

09:08:26 **Q.** Now, in addition, did you recall hearing Roger
09:08:36 Breckenridge mention the name Murtaugh?

09:08:40 **A.** Yes.

09:08:41 **Q.** And do you remember in what context you heard him
09:08:43 mention it?

09:08:44 **A.** I do not.

09:08:45 **Q.** And did you -- did -- strike that. Did Roger
09:08:49 Breckenridge mention the name Thibodeau during the
09:08:52 conversation?

09:08:52 **A.** Yes.

09:08:52 **Q.** And do you remember in what context?

09:08:54 **A.** No.

09:08:58 MS. PEEBLES: Nothing further, thank you.

09:09:03 THE COURT: Mr. Moody or Mr. Oakes?

09:09:10 MR. OAKES: Your Honor, can I have the
09:09:14 microphone please?

09:09:17 (Whereupon, there was a pause in the
proceeding.)

CROSS-EXAMINATION

09:10:06 BY MR. OAKES:

09:10:06 **Q.** Good morning, Mr. Combes.

09:10:09 **A.** Good morning.

09:10:10 **Q.** Roger Breckenridge started working for you in the
09:10:17 early two-thousands?

09:10:18 **A.** No. He started working for my brother, Heath, I'm
09:10:20 sorry.

09:10:20 **Q.** And you worked for your brother Heath or with your
09:10:23 brother Heath as part of Combes Paving?

09:10:26 **A.** Yes.

09:10:27 **Q.** And you described your relationship with Roger
09:10:30 Breckenridge as one being basically a business
09:10:33 relationship?

09:10:33 **A.** Yes.

09:10:34 **Q.** Did you ever go out drinking with him?

09:10:38 **A.** Yes, I did, because we worked out of town, not as a
09:10:45 friendship going out drinking with Roger, no, but we did do
09:10:49 out of town work, and Roger was out to dinner with us, and
09:10:52 we did go to facilities like that, yes.

09:10:56 **Q.** Outside of let's call those work trips where you are
09:11:01 overnight, out of town, did you ever go to birthday parties
09:11:04 for him or he'd come to your birthday party?

09:11:07 **A.** No.

09:11:07 **Q.** Did you guys ever hang out at each other's house?
09:11:13 Did he ever come by your place?

09:11:14 **A.** If he came by my place, it was to sell me something.

09:11:18 **Q.** Okay, so again, you didn't have the type of
09:11:20 relationship where he would confide close personal secrets
09:11:25 to you?

09:11:26 **A.** Absolutely not.

09:11:28 **Q.** And the day that you said he mentioned Heidi Allen,
09:11:32 and this is sometime in the two-thousands, do you have a
09:11:35 sense as to what year it would have been, Mr. Combes?

09:11:37 **A.** I don't. I really don't. I didn't, you know, I
09:11:41 took it with a grain of salt because it was Roger. Knowing
09:11:44 Roger, I didn't take -- I didn't -- I didn't take it to
09:11:49 heart because I didn't -- I didn't think he'd ever be
09:11:52 capable of doing something like that.

09:11:54 **Q.** Why not?

09:11:55 **A.** Just because Roger was Roger. If you knew him
09:11:58 you'd -- he was a drug addict and, you know, if it was
09:12:03 raining, if he told you it was raining outside, you'd have
09:12:05 to look out the window and see for yourself. That's just
09:12:08 the way he was.

09:12:09 **Q.** Well, again, you told Ms. Peebles that you didn't
09:12:12 think it was credible when he told you that.

09:12:14 **A.** No.

09:12:14 **Q.** And I guess I'm trying to get to the why didn't you
09:12:18 think it was credible?

09:12:19 **A.** Because of the way Roger is.

09:12:21 **Q.** Was it your sense when he was telling you this that
09:12:25 he was telling you something he had really done or maybe he
09:12:29 was just telling you something to try to get your attention
09:12:31 or make himself seem more important?

09:12:33 MS. PEEBLES: Objection.

09:12:34 THE COURT: I'm going to allow it.

09:12:37 **A.** I'm sorry, repeat the question.

09:12:37 **Q.** In listening to him, did he sound serious like this
09:12:41 is something he had actually done or did it sound like
09:12:44 something he was talking about to either kind of get your
09:12:46 attention or to make himself seem more important like the
09:12:49 big man?

09:12:50 **A.** I'm going to be honest with you, I didn't pay much
09:12:52 attention to him. I just remember the words that he said.
09:12:54 I didn't think much on it.

09:12:57 **Q.** Okay, his words were that again, did he say I, we,
09:13:06 they, what were the -- did he use a pronoun, did he use a
09:13:10 name?

09:13:10 **A.** It was "we."

09:13:11 **Q.** "We?" Okay. And it was the "we" chopped her up,
09:13:16 put her in a vehicle and sent her to Canada?

09:13:19 **A.** I can't put it in context for you. I do know that

09:13:24 those were the words that were said, but whether they were
09:13:28 mixed a different way, but yes, that's the basic in a
09:13:33 nutshell, that's what was said, yes.

09:13:35 **Q.** But you don't, and again, it's some time, you don't
09:13:40 remember the exact words or how he was saying it?

09:13:42 **A.** No. It could have been, "We put her in a wood stove
09:13:47 but we chopped her up and sent her to Canada." It could
09:13:52 have been put four different ways. I'm not exactly sure
09:13:55 how he put it but --

09:13:56 **Q.** So your testimony, it's -- you're not telling this
09:13:59 court that these are the exact words that Roger said, this
09:14:03 was kind of more of your impression, kind of your summary
09:14:05 of what he said?

09:14:06 **A.** No, they were the exact words, but I'm not saying
09:14:10 that's how they were put in a sentence or the context of
09:14:12 how he said it, but yes, that is what he said, but
09:14:16 that's -- may not be the way he said it to me.

09:14:19 **Q.** Did he -- did he say the word "chopped" or did you
09:14:23 assume that he chopped her because he talked about a wood
09:14:26 stove?

09:14:26 **A.** No, he said, "chopped her up."

09:14:29 **Q.** Okay, did he -- did he say the name Michael Bohrer
09:14:34 at any point?

09:14:34 **A.** No.

09:14:35 **Q.** Did he say the name James Steen at any point?

09:14:38 **A.** No.

09:14:39 **Q.** But during that same conversation he did say the
09:14:42 name Thibodeau?

09:14:43 **A.** Yes.

09:14:45 **Q.** Did he specify Gary or Richard Thibodeau?

09:14:48 **A.** No.

09:14:48 **Q.** And was it Thibodeau singular or Thibodeau plural,
09:14:53 Thibodeaus?

09:14:55 **A.** Thibodeau.

09:14:56 **Q.** Singular?

09:14:57 **A.** Yes.

09:14:58 **Q.** During that same conversation when he mentioned
09:15:01 Thibodeau, did he mention anything about drugs or cocaine?

09:15:04 **A.** No. I made the assumption that that's what it was
09:15:06 about, was the drugs.

09:15:08 **Q.** How -- how did you reach that conclusion?

09:15:11 **A.** Just because of the court case years ago, I mean I
09:15:14 don't really know much about it, but I do know that it
09:15:17 was -- it was over drugs, so I just assumed that it was
09:15:19 over drugs.

09:15:20 **Q.** But Mr. Breckenridge didn't tell you it was over
09:15:23 drugs.

09:15:23 **A.** No.

09:15:24 **Q.** And Mr. Breckenridge, he didn't admit to kidnapping
09:15:31 Heidi or taking her from the store, he didn't tell you he

09:15:34 did that did he?

09:15:35 **A.** No.

09:15:36 **Q.** So really the description he gave to you was -- well, did he say whether she was alive when he saw her or dead when he saw her, first saw her?

09:15:48 **A.** No. Pretty cut and dry as to what he said to me, and like I said, I didn't take much from him, and I didn't really go into detail with him so --

09:15:57 **Q.** And as Ms. Peebles asked you, and you never reported it to law enforcement at that point?

09:16:03 **A.** No.

09:16:04 **Q.** Because you didn't think it was serious and you didn't really think it was real?

09:16:08 **A.** Right.

09:16:09 **Q.** Okay.

09:16:14 MR. OAKES: No further questions, Your Honor.

09:16:17 THE COURT: Ms. Peebles?

09:16:18 MS. PEEBLES: A brief followup question.

REDIRECT EXAMINATION

09:16:23 BY MS. PEEBLES:

09:16:23 **Q.** Mr. Combes, you mentioned that Roger Breckenridge was a drug addict.

09:16:27 **A.** Yes.

09:16:28 **Q.** How did you know that?

09:16:29 **A.** It was pretty -- it was pretty noticeable, very

09:16:34 noticeable, and just -- he just was.

09:16:38 **Q.** Did you ever see him use any type of
09:16:40 narcotic?

09:16:42 **A.** Not that I can recall, no.

09:16:45 **Q.** Do you know what type of drugs he was using?

09:16:48 **A.** I don't.

09:16:52 **Q.** Did he ever ask you for money?

09:16:55 **A.** Yes.

09:16:55 **Q.** How often did he ask you for money?

09:16:57 **A.** Quite often.

09:16:59 MR. OAKES: Objection, Your Honor, relevance
09:17:00 and beyond the scope.

09:17:02 THE COURT: It is beyond the scope. I'm going
09:17:04 to sustain the objection.

09:17:05 **Q.** Now, when you heard the word "Thibodeau," you don't
09:17:09 know whether he mentioned Thibodeau as being innocent
09:17:13 during the course of that conversation he talked about with
09:17:15 Heidi Allen.

09:17:16 **A.** He very well could have. I don't remember, and I'm
09:17:19 not going to sit here and make a story up to defend
09:17:22 anybody, so yeah, he -- I don't recall him saying anything
09:17:25 other than the name Thibodeau.

09:17:27 **Q.** Thank you, Mr. Combes.

09:17:29 MS. PEEBLES: Nothing further.

09:17:30 THE COURT: Thank you. Mr. Oakes?

09:17:31 MR. OAKES: No recross, Your Honor.

09:17:33 THE COURT: Mr. Combes, thank you very much,
09:17:35 sir. Have a good day. You can step down. Next
09:17:37 witness?

09:17:44 MS. PEEBLES: Jessica Howard.

09:17:53 THE COURT: You obtained a statement by Ms.
09:17:55 Howard yesterday or --

09:17:57 MS. PEEBLES: We just did it yesterday.

09:17:59 THE COURT: You got it yesterday or this
09:18:01 morning?

09:18:01 MS. PEEBLES: This morning.

09:18:02 MR. OAKES: They -- the investigators
09:18:04 interviewed her last night, Your Honor.

09:18:06 THE COURT: Okay, I just want to make sure.

09:18:08 MS. PEEBLES: We did get --

09:18:09 THE COURT: Okay.

09:18:30 THE CLERK: Raise your right hand, put your
09:18:37 left on the Bible.

JESSICA HOWARD, Called as a witness, having
09:18:40 been duly sworn, was examined and testified as follows:

09:18:40 THE CLERK: Please state your name for the
09:18:48 record.

09:18:48 THE WITNESS: Jessica Howard.

09:18:49 THE CLERK: Spell your last name.

09:18:50 THE WITNESS: H-O-W-A-R-D.

09:18:53 THE CLERK: Have a seat please.

09:18:54 THE COURT: Ready?

09:18:56 MS. BIANCO: Do you have to ask her about the
09:18:58 video?

09:18:58 THE COURT: I'm going to. I didn't see Ms.
09:19:01 Peebles here a second ago. I wanted to check with her.
09:19:04 Ms. Howard, do you consent to have your testimony
09:19:06 videotaped and audio taped?

09:19:08 THE WITNESS: Yes.

09:19:08 THE COURT: You do, okay.

DIRECT EXAMINATION

09:19:12 BY MS. BIANCO:

09:19:12 **Q.** Good morning, Ms. Howard.

09:19:14 **A.** Hi.

09:19:14 **Q.** How old are you?

09:19:14 **A.** Twenty-nine.

09:19:15 **Q.** And what county do you live in?

09:19:16 **A.** Oswego.

09:19:19 **Q.** Who do you live with?

09:19:20 **A.** My husband and six kids.

09:19:22 **Q.** And who is your husband?

09:19:23 **A.** Andrew Howard.

09:19:24 **Q.** How long have you been married?

09:19:26 **A.** Twelve years.

09:19:27 **Q.** Is your husband Andrew related to Roger

09:19:30 Breckenridge?
09:19:31 A. Yes.
09:19:31 Q. How is he related?
09:19:32 A. That's his uncle.
09:19:33 Q. Do you currently reside near any of the other
09:19:36 Breckenridges?
09:19:37 A. Yes.
09:19:38 Q. And who would that be?
09:19:39 A. Allen Howard and the Wests are related to the
09:19:47 Howards and Breckenridges.
09:19:48 Q. So which West would live close to you?
09:19:50 A. Mike.
09:19:51 Q. Okay, how about Dan?
09:19:53 A. And Danny.
09:19:54 Q. And how close do these Breckenridges live to you?
09:19:57 A. Danny lives next door, Mike lives not even a mile
09:20:01 and Allen lives in Lot 2.
09:20:03 Q. And how long have you known the Breckenridge family?
09:20:07 A. As long as I have been married.
09:20:08 Q. So that would be approximately how many years?
09:20:10 A. Twelve years.
09:20:11 Q. Okay, do you know a person named Candy Shortsleeve?
09:20:15 A. Yes.
09:20:15 Q. And how do you know her?
09:20:16 A. That's my mother-in-law.

09:20:18 Q. And is she related to Roger Breckenridge?

09:20:21 A. Yes.

09:20:22 Q. How?

09:20:22 A. Sister.

09:20:23 Q. Now did you know Heidi Allen?

09:20:27 A. Yes.

09:20:27 Q. How long had you known her before her disappearance?

09:20:31 A. Practically two years.

09:20:34 Q. And who introduced you to Heidi Allen?

09:20:36 A. Her mother.

09:20:37 Q. How did you meet her? What were the circumstances?

09:20:40 A. Oh, I was in foster care.

09:20:45 Q. And how did you know Heidi's mother?

09:20:47 A. Teacher.

09:20:48 Q. Your teacher?

09:20:50 A. Um hum.

09:20:51 Q. Okay, and she introduced you to Heidi?

09:20:54 A. Yes.

09:20:54 Q. And did you develop a friendship with her?

09:20:57 A. Yes, I did.

09:20:58 THE COURT: With who, Heidi or Heidi's mother?

09:21:01 Q. Heidi Allen.

09:21:03 A. Heidi.

09:21:03 Q. And how would you describe your relationship with
09:21:06 Heidi Allen?

09:21:07 **A.** Like a sister.

09:21:08 **Q.** Would you talk about personal things to Heidi?

09:21:10 **A.** Yes.

09:21:11 **Q.** Okay, like what?

09:21:12 **A.** About --

09:21:14 MR. OAKES: Objection, Your Honor.

09:21:16 MS. BIANCO: Well, Judge, this becomes
09:21:17 relevant if you give me a couple questions.

09:21:20 THE COURT: She was nine years old, right, at
09:21:22 the time?

09:21:22 MS. BIANCO: It's what the information she
09:21:23 gave to Heidi, where that information went.

09:21:26 **Q.** Why were you talking to Heidi?

09:21:28 **A.** About my being in foster care.

09:21:31 **Q.** And why was that?

09:21:32 **A.** Being raped.

09:21:33 **Q.** And what was your understanding about the
09:21:36 information you were giving to Heidi? Where was that
09:21:38 going?

09:21:38 **A.** To the cops.

09:21:40 MR. OAKES: Objection, Your Honor, speculation
09:21:42 and relevance.

09:21:43 MS. BIANCO: I'll ask her how she knows.

09:21:44 THE COURT: What's the relevance?

09:21:46 MS. BIANCO: Heidi Allen was acting as an

09:21:49 informant and still passing on information from Ms. Howard to the police. This is in 1994, Judge, and that's what I want to get at.

09:21:56 THE COURT: There is no proof at this point that Heidi Allen was an informant. Every argument so far Heidi Allen was an informant for drug issues, not foster care rape issues.

09:22:05 MS. BIANCO: She's still talking to the police at this time.

09:22:06 THE COURT: That's your belief.

09:22:07 MS. BIANCO: That's what I want to ask her if I could.

09:22:09 THE COURT: You better ask foundation for this, at nine years old, how she thought it was related to the police.

09:22:16 **Q.** What made you believe that Heidi was relaying your information to the police?

09:22:21 **A.** Because she told me.

09:22:22 MR. OAKES: Objection, hearsay.

09:22:24 THE COURT: Sustained, it's hearsay.

09:22:25 **Q.** Did you talk to the police about your abuse?

09:22:28 **A.** Yes.

09:22:28 **Q.** Okay, were you comfortable doing that?

09:22:31 **A.** Yes.

09:22:32 **Q.** Why were you giving information to Heidi?

09:22:34 **A.** Because the police --
09:22:36 MR. OAKES: Objection, Your Honor, relevance.
09:22:38 THE COURT: You got to explain to me the
09:22:40 relevance. She just said she talked to the police
09:22:42 about her abuse which no child should go through.
09:22:45 MS. BIANCO: Exactly.
09:22:46 THE COURT: And how do you tie Heidi Allen
09:22:49 into this?
09:22:49 MS. BIANCO: Heidi Allen was speaking to the
09:22:52 police about some of the abuse she suffered.
09:22:54 THE COURT: Based on this young lady at nine
09:22:56 years old saying Heidi Allen told me she talked to the
09:22:59 police? That's hearsay.
09:23:00 MS. BIANCO: Judge, she has an independent
09:23:04 understanding of Heidi talking to the police. I can
09:23:06 ask the question.
09:23:06 THE COURT: Go ahead.
09:23:07 **Q.** How do you know Heidi was talking to the police in
09:23:09 1994 about what you were saying?
09:23:10 **A.** Because the cops knew all the information.
09:23:12 **Q.** And did you tell the cops the information?
09:23:15 **A.** Not all of it.
09:23:15 MR. OAKES: Objection, Your Honor.
09:23:16 THE COURT: It's based on hearsay. I'm going
09:23:18 to strike it.

09:23:19 MS. BIANCO: She just said "not all of it,"
09:23:21 Judge.

09:23:21 THE COURT: It's based on hearsay.

09:23:23 **Q.** On August eight, 2011 did you call the police?

09:23:27 **A.** Yes.

09:23:27 **Q.** Why?

09:23:28 **A.** 'Cause it had been a fight me and my husband had.

09:23:34 **Q.** And do you remember on August eighth, 2011 giving
09:23:39 the police information about Heidi Allen?

09:23:41 **A.** Yes.

09:23:41 **Q.** What did you tell them?

09:23:43 **A.** That she was --

09:23:45 MR. OAKES: Objection, Your Honor.

09:23:46 THE COURT: No, I'll allow it.

09:23:47 **A.** She was in a field behind a shed.

09:23:50 MR. OAKES: Objection, Your Honor, as to the
09:23:51 witness's foundation, basis of knowledge.

09:23:55 THE COURT: I'm not going to give it any
09:23:58 credibility at this point unless I have some
09:23:59 foundation, but she can answer the question.

09:24:01 MR. OAKES: Okay.

09:24:02 **Q.** Well, where did you speak to the police on August
09:24:05 eight, 2011?

09:24:07 **A.** Outside of my home.

09:24:09 **Q.** And where was your home?

09:24:10 **A.** On County Route 48.

09:24:12 **Q.** Okay, and where did you tell them you got information concerning Heidi Allen's -- did you tell them information about Heidi Allen's death and disappearance?

09:24:23 **A.** Just behind the field and the shed.

09:24:28 MR. OAKES: Objection, Your Honor. Again, it's the witness's basis of knowledge.

09:24:31 THE COURT: It's a credibility issue. She can answer it.

09:24:33 **Q.** And how long did you reside at that particular residence?

09:24:39 **A.** Probably three, four years.

09:24:41 **Q.** Did any police come to talk to you about the information you had about Heidi Allen in 2011?

09:24:47 **A.** No.

09:24:47 **Q.** Were you -- did you have a home telephone number?

09:24:50 **A.** Yes.

09:24:51 **Q.** Were you listed?

09:24:52 **A.** Yes.

09:24:53 **Q.** No one called you in 2012?

09:24:55 **A.** No.

09:24:55 **Q.** 2013?

09:24:56 **A.** No.

09:24:57 MR. OAKES: Objection, relevance, Your Honor.

09:24:58 THE COURT: Sustained.

09:25:01 MS. BIANCO: Well, this, Your Honor, this goes directly to what the police knew about Roger Breckenridge, and I'm going to get into this.

09:25:09 THE COURT: No, it doesn't, it does not. I disagree with you. I'm not trying to be difficult, Ms. Bianco. You have not laid any foundation for credibility of the statement. This is a young lady who is making or saying something to the cops.

09:25:21 **Q.** I'd like to talk to you about Roger Breckenridge. You know Roger Breckenridge?

09:25:27 **A.** Yes.

09:25:27 **Q.** Were you ever in his presence when he was discussing Heidi Allen?

09:25:32 **A.** Yes.

09:25:33 **Q.** Do you remember one particular time when you were at McDonald's?

09:25:37 **A.** Yes.

09:25:37 **Q.** Could you tell us when that was?

09:25:41 **A.** Not really.

09:25:42 **Q.** Was it the last ten years?

09:25:44 **A.** Yes.

09:25:44 **Q.** Who was present?

09:25:46 **A.** Me and my husband.

09:25:47 **Q.** And who else?

09:25:48 **A.** My kids.

09:25:49 **Q.** Okay, and what did Roger say to you?

09:25:54 **A.** That "the bitch ain't going to be found."

09:25:57 **Q.** I'm sorry, can you repeat that?

09:25:59 **A.** "The bitch is not going to be found."

09:26:01 **Q.** Did he also mention her -- anything about her being
09:26:04 an informant?

09:26:05 **A.** A rat.

09:26:06 **Q.** A what?

09:26:06 **A.** "She's a rat."

09:26:08 **Q.** He said that to you?

09:26:09 **A.** Yes.

09:26:09 **Q.** And did he state where her body was?

09:26:13 **A.** No.

09:26:14 **Q.** What did he say about the evidence if anything about
09:26:19 her body?

09:26:20 **A.** "She ain't going to be found."

09:26:22 **Q.** Did he say anything about it being a waste of time
09:26:27 looking for her?

09:26:27 **A.** Yes.

09:26:28 MR. OAKES: Objection, leading, Your Honor.

09:26:30 THE COURT: I'll allow it. You can answer the
09:26:32 question. Ask the question again.

09:26:34 **Q.** Did he say anything about it being a waste of time
09:26:36 looking for Heidi Allen?

09:26:39 **A.** Yes.

09:26:39 **Q.** What did he say?

09:26:41 **A.** "It's a waste of government's time to be finding her."

09:26:44 **Q.** And what did you say in response to Roger when he was saying this?

09:26:48 **A.** It's my friend, that she should be found.

09:26:52 **Q.** Was this the only time that you ever heard Roger Breckenridge talk about the disappearance or death of Heidi Allen?

09:27:00 **A.** No.

09:27:00 **Q.** How many other times did you hear him talk?

09:27:04 **A.** Probably like once or twice.

09:27:06 **Q.** Okay, and over the course of how many years?

09:27:08 **A.** Twelve.

09:27:11 **Q.** Where would these conversations occur?

09:27:13 **A.** Parties mostly.

09:27:15 **Q.** Did he ever say why Heidi Allen was -- was abducted?

09:27:22 **A.** Being a rat.

09:27:24 **Q.** Did he specify what about being a rat, what was she a rat on?

09:27:30 **A.** Drugs.

09:27:31 **Q.** Did you have an occasion to meet with the prosecutors and the investigators in this case on January eight, 2015?

09:27:41 **A.** Yes.

09:27:41 **Q.** And where did you meet them?

09:27:43 **A.** County jail, Oswego County jail.

09:27:46 **Q.** Were you in the jail?

09:27:48 **A.** No.

09:27:48 **Q.** In the investigator's office?

09:27:50 **A.** Yes.

09:27:51 **Q.** Were you trying to be cooperative?

09:27:52 **A.** Yes.

09:27:53 **Q.** And what did you tell them as to why Heidi Allen was
09:27:56 killed?

09:27:56 **A.** Drugs and -- mostly that's it.

09:28:04 THE COURT: And what?

09:28:04 THE WITNESS: That's it.

09:28:05 THE COURT: That's it.

09:28:06 THE WITNESS: Um hum.

09:28:07 **Q.** Did you mention anything about Heidi going to call
09:28:10 the cops on Roger?

09:28:12 **A.** Yes.

09:28:13 **Q.** What did you say?

09:28:14 MR. OAKES: Objection, Your Honor.

09:28:16 THE COURT: She's not testified to anything
09:28:18 that Roger said that the cops wouldn't be called on her
09:28:23 at this point. What's the basis?

09:28:24 **Q.** What did you say that Roger said to you about the
09:28:29 cops?

09:28:30 **A.** That it's a waste of time.

09:28:32 **Q.** Okay, how about did Roger ever say that he killed Heidi because she was going to call the cops on him and tell them about selling drugs? Did he say that?

09:28:42 MR. OAKES: Objection, leading, Judge.

09:28:43 THE COURT: Yes, that's sustained. That's over the board on the leading. Sustained. Don't answer the question.

09:28:48 **Q.** What did Roger say to you about calling the cops, about Heidi calling the cops, what did he say?

09:28:53 MR. OAKES: Objection as to when, Your Honor.

09:28:56 THE COURT: I'd like to hear when if possible approximately.

09:29:01 THE WITNESS: When?

09:29:01 THE COURT: Approximately.

09:29:02 THE WITNESS: When he said that? I don't know. It was in the springtime.

09:29:11 **Q.** Springtime of the last how many years?

09:29:14 **A.** I would say two.

09:29:15 **Q.** Last two years?

09:29:16 **A.** Yes.

09:29:18 **Q.** You have to speak up just because she's taking everything down.

09:29:22 **A.** Okay, I'll move closer.

09:29:25 **Q.** Okay, and what did he say to you about Heidi being

09:29:29 killed and why?

09:29:31 **A.** Just being a rat on drugs, she was going to break
09:29:35 him on selling drugs.

09:29:37 **Q.** Break who?

09:29:39 **A.** Tell the cops I mean, bust her.

09:29:44 **Q.** And did Roger say that he killed Heidi?

09:29:47 **A.** No.

09:29:47 **Q.** Did Roger tell you that he knew where her body was
09:29:53 buried?

09:29:54 **A.** No.

09:29:54 **Q.** What else did Roger say about Heidi Allen?

09:30:02 **A.** Just she's not going to be found, and she's a rat,
09:30:06 and it's a waste of government's time.

09:30:09 **Q.** Did you offer -- when you met with the prosecutors
09:30:15 and the investigators on January eight, 2015, did you offer
09:30:20 to help them get more information?

09:30:22 **A.** Yes.

09:30:24 **Q.** Were you ever expressing any kind of concern about
09:30:27 your safety?

09:30:27 **A.** No.

09:30:28 **Q.** Did you ever talk about your fear of being dead?

09:30:34 **A.** No.

09:30:36 **Q.** Have you been given a hard time by any of your
09:30:40 family members about what you have been talking about about
09:30:42 Heidi Allen in there?

09:30:43 **A.** No.

09:30:44 **Q.** None at all?

09:30:44 **A.** No.

09:30:45 **Q.** When you were meeting with the investigators on
09:30:51 January eighth, 2015, did there come a point in time when
09:30:57 you were in the interview room and you were left alone with
09:31:01 their investigator, Kathleen MacPherson?

09:31:03 **A.** Yes.

09:31:05 **Q.** Okay, did she make suggestions to you about what to
09:31:10 say to your family about why you were in the police
09:31:12 department?

09:31:12 **A.** Yes.

09:31:13 MR. OAKES: Objection, Your Honor, relevance.

09:31:16 THE COURT: It's hearsay.

09:31:19 MS. BIANCO: It's not offered for the truth.

09:31:21 THE COURT: Okay, so she's not going to tell
09:31:23 me now what the suggestions were?

09:31:25 **Q.** I'm going to follow up with did you get a phone call
09:31:29 when you were in the interview room?

09:31:31 **A.** Yes.

09:31:31 **Q.** Did you follow up by telling the person on the
09:31:35 phone -- was that a family member?

09:31:38 **A.** Yes.

09:31:38 **Q.** And did you follow the suggestion of Ms. MacPherson
09:31:41 as to what to say as to why you were there?

09:31:42 **A.** Yes.

09:31:43 **Q.** And what did you say?

09:31:44 **A.** That I was here for the fight that we had in 2004.

09:31:50 **Q.** And why didn't you want to talk about Heidi Allen on
09:31:53 the phone with your family member?

09:31:54 **A.** Because I didn't want --

09:31:56 MR. OAKES: Objection, Your Honor, on
09:31:57 relevance.

09:31:58 MS. BIANCO: She lives surrounded by the
09:32:00 Breckenridge, Judge.

09:32:02 THE COURT: Well, she just said she's not been
09:32:03 harassed at all by the family.

09:32:04 MS. BIANCO: Well, she just now, she just
09:32:06 said, "I didn't want them to know."

09:32:08 MR. OAKES: Your Honor, she's already
09:32:09 testified she has no concerns over her safety. She
09:32:13 hasn't been harassed.

09:32:14 THE COURT: She said that, the first line of
09:32:15 questions, you said do you have any fear about talking
09:32:18 about it from family members. No. Ever had any
09:32:20 problems with family members. No.

09:32:22 **Q.** Did you have any problems with family members when
09:32:24 the first newspaper article came out?

09:32:27 **A.** Just a little bit, but not a lot.

09:32:30 **Q.** Okay, and why are you coming forward now?

09:32:34 **A.** I wanted to come forward a long time ago.

09:32:38 **Q.** When is the first time you came forward about Heidi Allen?

09:32:40 **A.** 2004.

09:32:42 **Q.** Okay, and who did you call?

09:32:44 **A.** I called the cops.

09:32:45 **Q.** Which cops? Oswego County Sheriff's?

09:32:49 **A.** It would probably be Mexico area.

09:32:53 **Q.** Okay, and what did you say then in 2004?

09:32:56 **A.** That I knew --

09:32:57 MR. OAKES: Objection, Your Honor. Relevance and bolstering.

09:33:01 THE COURT: Well --

09:33:02 MS. BIANCO: Well, Your Honor, if the police had been receiving information or tried -- she's trying to give information from 2004 and no one has ever followed up, I think that's certainly relevant to this investigation. It's also relevant to the Brady issues about disclosures, non-disclosures.

09:33:16 THE COURT: It's absolutely not related to the Brady issue. I'll allow it, but to be honest with you, Ms. Bianco, what you're getting into is if an investigator talked to her and the investigator finds her not credible.

09:33:34 MS. BIANCO: Well, no one ever talked to her.

09:33:35 That's the problem, Judge.

09:33:36 THE COURT: Let's see what she says.

09:33:38 **Q.** In 2004 did you try and give information about Heidi Allen?

09:33:42 **A.** Yes.

09:33:42 **Q.** Did anyone ever come to speak with you?

09:33:45 **A.** No.

09:33:45 **Q.** And in 2011 you tried to give information about Heidi Allen?

09:33:49 **A.** Yes.

09:33:50 MR. OAKES: Objection, Your Honor.

09:33:51 **Q.** Anybody come to speak to you?

09:33:52 **A.** No.

09:33:52 MR. OAKES: Objection. Asked and answered.

09:33:54 THE COURT: It's been asked and answered but that's fine.

09:33:59 MS. BIANCO: No further questions.

09:34:00 THE WITNESS: Thank you.

09:34:03 THE COURT: Do you need a moment? Are you all right.

09:34:05 THE WITNESS: I'm good.

09:34:05 THE COURT: Mr. Oakes or Mr. Moody?

09:34:08 MR. OAKES: Thank you, Your Honor.

09:34:17 CROSS-EXAMINATION

09:34:18 BY MR. OAKES:

09:34:19 **Q.** Good morning, Jessica. Good morning, Ms. Howard. How are you?

09:34:37 **A.** Good.

09:34:37 **Q.** How are you feeling this morning?

09:34:39 **A.** Good.

09:34:40 **Q.** Ms. Howard, you testified to Ms. Bianco about some statements Roger told you?

09:34:48 **A.** Um hum.

09:34:49 **Q.** Roger never told you that he kidnapped Heidi Allen.

09:34:53 **A.** No.

09:34:53 **Q.** He never told you that he killed Heidi Allen.

09:34:56 **A.** No.

09:34:57 **Q.** He never told you that he disposed of her body.

09:35:00 **A.** No.

09:35:01 **Q.** He never told you what happened to Heidi Allen's body.

09:35:04 **A.** No.

09:35:05 **Q.** He never specifically told you where Heidi's body was.

09:35:08 **A.** No.

09:35:10 THE COURT: Before you ask another question, Ms. Howard, this is your chance to speak loudly enough so the people in the back can hear you.

09:35:17 THE WITNESS: Sorry.

09:35:17 THE COURT: That's all right, just make sure

09:35:18 you speak loudly. Mr. Oakes, go ahead.

09:35:21 **Q.** Now you said that on one time in the past ten years
09:35:24 you were with your husband Andrew?

09:35:26 **A.** Yes.

09:35:27 **Q.** And Roger at McDonald's?

09:35:28 **A.** Yes.

09:35:29 **Q.** Were you guys inside the restaurant?

09:35:31 **A.** No.

09:35:31 **Q.** Were you in the drive through?

09:35:33 **A.** Yes.

09:35:33 **Q.** Okay, and were you guys talking about Heidi Allen?

09:35:39 **A.** No.

09:35:41 **Q.** So Roger, without any -- without any mention of
09:35:46 Heidi, just suddenly said, "The bitch is not going to be
09:35:49 found?" He just said it out of nowhere?

09:35:52 **A.** No. My husband was talking about my friend and he
09:35:57 says well, which one would I know.

09:35:59 **Q.** Explain that to me again, Jessica, I'm sorry.

09:36:03 **A.** We were just talking about it like friends, and he
09:36:06 said well, she knows Heidi, and that's when it came out.

09:36:11 **Q.** So your husband sometime in the last ten years told
09:36:15 Roger that you knew Heidi Allen?

09:36:17 **A.** Yes.

09:36:18 **Q.** Heidi Allen's been gone since 1994, right?

09:36:23 **A.** Yes.

09:36:24 MS. BIANCO: Objection. He's testifying now.

09:36:26 THE COURT: I'll allow it, but don't go much
09:36:29 further, Mr. Oakes.

09:36:29 **Q.** Have you seen her since 1994?

09:36:31 **A.** No.

09:36:32 **Q.** And when Roger said these words, that "the bitch is
09:36:45 not going to be found," he didn't say how he knew that,
09:36:48 right?

09:36:48 **A.** No.

09:36:49 **Q.** And he said that she was a rat. He didn't say why
09:36:54 he thought she was a rat did he?

09:36:56 **A.** Just drugs.

09:36:57 **Q.** He didn't say that she was ratting on him did he?

09:37:02 **A.** No.

09:37:03 **Q.** And back sometime in the last ten years, he said it
09:37:11 was a waste for the government to be looking for Heidi?

09:37:14 **A.** Yes.

09:37:15 **Q.** Was there something going on at that time where they
09:37:18 were looking for Heidi?

09:37:19 **A.** I think so.

09:37:20 **Q.** Okay, well, when -- when was that? What was the
09:37:25 government doing to find Heidi at that time?

09:37:28 **A.** Must have been on the news.

09:37:31 **Q.** And you -- you told Roger that she was -- she, being
09:37:42 Heidi, was your friend, she should be found?

09:37:45 **A.** Yes.

09:37:46 **Q.** You said you knew Heidi when you were nine years
09:37:49 old?

09:37:49 **A.** Yeah.

09:37:50 **Q.** When -- how old are you now, ma'am?

09:37:52 **A.** Twenty-nine.

09:37:53 **Q.** What year were you born?

09:37:54 **A.** Eighty-five.

09:37:56 **Q.** So you were nine years old. I think you told
09:38:00 counsel you were living in foster care at that time?

09:38:02 **A.** Yes.

09:38:03 **Q.** And you said that Sue Allen, Heidi's mom, was your
09:38:09 teacher?

09:38:10 **A.** Yes.

09:38:10 **Q.** What school was that?

09:38:11 **A.** New Haven.

09:38:12 **Q.** And you said that Sue Allen -- you told Sue Allen
09:38:19 about some stuff that was going on at home?

09:38:21 **A.** Yes.

09:38:21 **Q.** And so Sue Allen brought her daughter Heidi in to
09:38:26 meet with you?

09:38:27 **A.** Yes.

09:38:27 **Q.** How often would you meet with Heidi?

09:38:29 **A.** I think every day.

09:38:31 **Q.** Every day?

09:38:32 A. I think so, yes.

09:38:33 Q. Okay, for how long of a period of time?

09:38:37 A. I don't remember.

09:38:38 Q. Was it a week, a couple weeks, a couple months, was
09:38:42 it the whole school year, Jessica?

09:38:43 A. It wasn't the whole school year. Maybe a couple
09:38:50 weeks. I don't remember that much on that.

09:38:52 Q. And were you seeing Heidi and Heidi visiting you
09:39:04 during the time of her disappearance?

09:39:06 A. Yes.

09:39:09 Q. Now you said that sometime in the springtime in the
09:39:22 last two years you were talking with Roger again about
09:39:25 Heidi?

09:39:25 A. Yes.

09:39:27 Q. And Roger made some comments about Heidi? What did
09:39:31 he say at that point, the last two years?

09:39:34 A. Just the same stuff.

09:39:36 Q. Okay. Roger is your husband's cousin, right?

09:39:42 A. Uncle.

09:39:43 Q. Uncle. Okay, that's right. Because your mother-in-
09:39:46 law is Candy, right?

09:39:47 A. Right.

09:39:48 Q. And Roger's Candy's brother?

09:39:50 A. Right.

09:39:50 Q. And you have seen Roger around in -- the family's

09:39:54 pretty close with each other, they all interact with each
09:39:56 other quite a bit?

09:39:57 **A.** Yes.

09:39:57 THE COURT: Can we have just a second? Do you
09:40:00 have other witnesses coming?

09:40:01 MS. PEEBLES: Yes, Judge.

09:40:02 THE COURT: I think they're wandering back
09:40:03 there. Do you want to have them go sit down?

09:40:09 MS. PEEBLES: Sure. Just didn't want them
09:40:13 walking in the courtroom.

09:40:15 THE COURT: Go ahead.

09:40:16 **Q.** Okay. Now, so Roger is your husband's uncle?

09:40:25 **A.** Yes.

09:40:25 **Q.** And the Breckenridge family's pretty close, they
09:40:29 interact with each other quite a bit?

09:40:31 **A.** Yes.

09:40:31 **Q.** Jessica, do you know that Roger's been in prison for
09:40:37 the last two years on a grand larceny charge?

09:40:40 **A.** Yes.

09:40:40 **Q.** Okay, so can you explain to me then how you had this
09:40:44 conversation with Roger when he's been in prison?

09:40:46 **A.** Before he went in.

09:40:48 **Q.** Okay, and what made him bring it up that day?

09:40:57 **A.** I have no idea other than --

09:40:59 **Q.** What was going on? Who was around?

09:41:02 **A.** Just my husband.

09:41:03 **Q.** Your husband Andrew was there?

09:41:04 **A.** Yeah.

09:41:05 **Q.** Was your husband Andrew there to hear these admissions from Roger?

09:41:09 **A.** Yes.

09:41:10 **Q.** And did you and Andrew ever talk about those admissions?

09:41:14 **A.** Of me and Heidi?

09:41:17 **Q.** No.

09:41:18 **A.** Oh, Roger.

09:41:19 **Q.** You said that Roger made admissions, or made statements rather, let me rephrase it.

09:41:24 **A.** Yes.

09:41:24 **Q.** About Heidi in front of you and Andrew.

09:41:26 **A.** Right.

09:41:27 **Q.** Did you and Andrew ever talk about those statements Roger made later on?

09:41:31 **A.** No, he dropped it.

09:41:34 **Q.** Now, Ms. Bianco asked you back on January eight of this year, so last month, if you came to the Sheriff's Department and met with investigators and members of the DA's office, do you remember that?

09:41:51 **A.** Yes.

09:41:51 **Q.** And actually you met with me, Mr. Moody here, can

09:41:55 you see Mr. Moody over the box?

09:41:56 **A.** Yes.

09:41:57 **Q.** And we actually talked with you down the Sheriff's
09:42:00 Department didn't we?

09:42:00 **A.** Yes.

09:42:01 **Q.** And Jessica, at that time we told you we wanted you
09:42:06 to tell us whatever you knew about this case, right?

09:42:10 MS. BIANCO: Objection. Unsworn witness.
09:42:12 He's asking about what we said to her. He's acting as
09:42:15 an unsworn witness.

09:42:17 THE COURT: Overruled. I'll allow the
09:42:18 question.

09:42:18 **Q.** We asked you tell us everything you knew about the
09:42:21 case, right?

09:42:22 **A.** Yes.

09:42:23 **Q.** And at that time you told us about things you had
09:42:26 heard from Candy Shortsleeve, right?

09:42:28 **A.** Yes.

09:42:28 **Q.** And things that you had heard over the years from
09:42:32 other family members, right?

09:42:33 **A.** Yes.

09:42:33 **Q.** But we asked you if Roger ever said anything to you
09:42:38 didn't we?

09:42:38 **A.** Yes.

09:42:39 **Q.** And didn't you tell us no, Roger never said anything

09:42:42 in front of you?

09:42:44 **A.** I don't remember that.

09:42:47 **Q.** Jessica, you never told me and Mr. Moody about Roger
09:42:55 saying, "the bitch is not going to be found," you didn't
09:42:57 tell us that did you?

09:42:58 **A.** I thought I did.

09:43:00 **Q.** Are you unsure of whether you told us or not?

09:43:11 **A.** Yes.

09:43:12 **Q.** If you were to review the video recording of that
09:43:20 interview, would that refresh your recollection?

09:43:23 **A.** Oh, if I didn't, then I meant to. I forgot to say
09:43:27 it.

09:43:27 **Q.** Okay, at that time you didn't tell us that Roger
09:43:38 said that Heidi was a rat did you?

09:43:40 **A.** Ha?

09:43:42 **Q.** At that time you didn't tell Mr. Moody or myself
09:43:45 that Roger said Heidi was a rat, you didn't tell us that
09:43:49 did you?

09:43:50 **A.** I don't remember.

09:43:52 **Q.** Did you tell us that it was a waste of the
09:43:57 government's time?

09:43:57 **A.** That I thought I did.

09:44:00 **Q.** But you're not sure if you did?

09:44:01 **A.** No.

09:44:02 **Q.** Jessica, are you on any mental health medications at

09:44:22 this time?

09:44:22 **A.** Yes.

09:44:22 **Q.** What is that medication?

09:44:24 **A.** I don't know the names of them.

09:44:26 **Q.** What is it for?

09:44:27 **A.** Depression and anxiety.

09:44:30 **Q.** How often do you take that?

09:44:34 **A.** Every day.

09:44:36 **Q.** Did you take it today?

09:44:37 **A.** Yes, I did.

09:44:38 **Q.** Did you take it yesterday?

09:44:40 **A.** Yes, I did.

09:44:41 **Q.** Did you meet with some investigators from Oswego
09:44:45 County Sheriff's Department last evening?

09:44:47 **A.** Last night?

09:44:47 **Q.** Last night.

09:44:48 **A.** Yes.

09:44:48 **Q.** And you gave them a statement last night?

09:44:50 **A.** Yes, I did.

09:44:51 **Q.** And did you tell the investigators last night about
09:44:55 the medication that you're talking?

09:44:56 **A.** Yes, I did.

09:44:57 **Q.** And didn't you tell the investigators the medication
09:45:00 makes it hard for you to remember?

09:45:01 **A.** Yes.

09:45:02 **Q.** And you forget sometimes?

09:45:03 **A.** Yes.

09:45:04 **Q.** Does the medication make you confused sometimes about facts?

09:45:09 **A.** Yes.

09:45:10 **Q.** Does it make it hard for you to clearly remember events?

09:45:14 **A.** Yes.

09:45:15 **Q.** Jessica, Ms. Bianco asked you about some interactions with law enforcement. I want to ask you on January nineteenth of this year, did you have an interaction with a member of the Sheriff's Department?

09:45:41 **A.** Yes.

09:45:43 **Q.** Had you called 911?

09:45:45 **A.** No.

09:45:46 **Q.** Okay, did somebody call 911?

09:45:48 **A.** No.

09:45:49 **Q.** You -- on that day on January nineteenth you met with a deputy from the Sheriff's Department at your home didn't you?

09:45:58 **A.** Yes.

09:46:01 MS. PEEBLES: Excuse me. I'm having a real hard time hearing the questions. I can't hear Mr. Oakes' questions.

09:46:06 THE COURT: I don't think you turned yourself

09:46:08 back on, Mr. Oakes.

09:46:09 MR. OAKES: Okay. Double check.

09:46:14 THE COURT: There you go.

09:46:16 MR. OAKES: Thank you.

09:46:17 **Q.** Jessica, you met with a deputy at your house on that
09:46:20 day didn't you?

09:46:20 **A.** Yes.

09:46:21 **Q.** Why did you meet with a deputy on that day, Jessica?

09:46:27 **A.** They called me.

09:46:28 **Q.** When the deputy met with you, did you go someplace
09:46:33 that day?

09:46:35 **A.** No. I went outside.

09:46:38 **Q.** Okay. Jessica, you talked with the deputy at that
09:46:42 time because you told the deputy you were having suicidal
09:46:45 thoughts didn't you?

09:46:48 **A.** I did.

09:46:49 **Q.** Okay, and after that day, did you go to a mental
09:46:54 health facility?

09:46:55 **A.** Yes.

09:46:55 **Q.** And you were there for approximately nine days?

09:46:58 **A.** A week and two days.

09:47:00 **Q.** Okay, and what -- what were you there for, Jessica?

09:47:04 **A.** Max depression and anxiety, homicidal and suicidal
09:47:08 tendencies.

09:47:09 **Q.** And did they put you on medications at that time?

09:47:12 **A.** Yes.

09:47:15 **Q.** And again, that's the medication you're taking now?

09:47:18 **A.** Yes.

09:47:18 **Q.** And Jessica, could your medication that you're
09:47:40 taking that you're on now, could that be impacting your
09:47:44 ability to remember what was said many years ago?

09:47:46 **A.** Yes.

09:47:47 **Q.** So the testimony that you're giving today, are you a
09:47:51 hundred percent certain of that's what was said or are you
09:47:54 kind of unsure?

09:47:56 **A.** Some of it's yes. I remember some of it, yes.

09:47:59 **Q.** Okay.

09:48:20 THE COURT: Ms. Howard, do you need water?
09:48:22 All set?

09:48:49 (Whereupon, there was a pause in the
09:48:50 proceeding.)

09:48:50 **Q.** Jessica, Ms. Bianco asked you about speaking with
09:48:57 law enforcement back in 2011?

09:49:00 **A.** Yes.

09:49:00 **Q.** Do you remember those questions?

09:49:01 **A.** Yes.

09:49:02 **Q.** And originally you were speaking with law
09:49:04 enforcement on that day because of a complaint regarding
09:49:08 domestic violence?

09:49:10 **A.** Yes.

09:49:10 **Q.** You were in an argument I guess with your husband.

09:49:12 **A.** Yes.

09:49:13 **Q.** And at that time you told the deputy that was -- do
09:49:21 you remember it being Deputy Price? Do you remember the
09:49:23 deputy's name?

09:49:24 **A.** Yes.

09:49:25 **Q.** Was it Deputy Price?

09:49:26 **A.** I think so, yes.

09:49:27 **Q.** And at that time did you tell Deputy Price that
09:49:33 Heidi Allen's body had been found?

09:49:35 **A.** No.

09:49:36 **Q.** No? Did you tell the deputy where about Heidi
09:49:44 Allen's body was located at that point?

09:49:47 **A.** Yes.

09:49:48 **Q.** And did you tell Deputy Price that you were telling
09:49:58 him that because you wanted to get your family in trouble?

09:50:01 **A.** No.

09:50:01 **Q.** No? Now since meeting with myself and Mr. Moody
09:50:20 back in January and since this hearing started, you have
09:50:24 been conducting your own investigation regarding this case
09:50:26 haven't you?

09:50:27 **A.** Yes.

09:50:28 **Q.** You have been out trying to find information
09:50:30 regarding where Heidi's body is?

09:50:32 **A.** Yes.

09:50:32 **Q.** And you've gone to different locations?

09:50:35 **A.** Yes.

09:50:36 **Q.** And sometime in the last couple weeks, you went to a
09:50:41 sawmill out on County Route 1A?

09:50:43 **A.** Old County Route 1.

09:50:44 **Q.** Old County Route 1, I'm sorry. And you went to an
09:50:47 old sawmill?

09:50:48 **A.** Yes.

09:50:49 **Q.** And you saw some -- you saw a man there or men
09:50:52 there, was it one man or a couple men?

09:50:55 **A.** One.

09:50:56 **Q.** Tall, skinny guy you said?

09:50:58 **A.** Yes.

09:50:58 **Q.** And that was while this hearing was going on, right?

09:51:00 **A.** Yes.

09:51:01 **Q.** And it's your belief that that guy was removing
09:51:04 Heidi's body from that scene?

09:51:05 **A.** I believe so, yes.

09:51:07 **Q.** Do you know where he took the body to?

09:51:19 **A.** No.

09:51:19 **Q.** Jessica, again, we -- back when you were a child,
09:51:48 you said you knew Heidi when you were around nine years
09:51:51 old?

09:51:51 **A.** Yes.

09:51:51 **Q.** Now around that time, did you have an injury to your

09:51:54 leg, did you hurt your leg or hurt your leg sometime when
09:51:59 you were younger, maybe got burned?

09:52:02 **A.** I got burned.

09:52:03 **Q.** Okay, and because of the burn, your mom went out and
09:52:08 purchased you new skin?

09:52:11 **A.** Yeah. That's what she said.

09:52:14 **Q.** Okay, did your mom go out and get you new skin for
09:52:18 your leg?

09:52:19 MS. BIANCO: Objection to the relevance of
09:52:20 this new skin nonsense.

09:52:22 THE COURT: I'm going to sustain that. I'm
09:52:23 going to sustain that. Sustain the objection. You
09:52:26 don't need to answer the question.

09:52:34 MR. OAKES: No further questions, Your Honor.
09:52:37 Actually, Your Honor, can I have one moment?

09:52:40 THE COURT: Yeah.

09:52:41 (Whereupon, there was a pause in the
09:52:56 proceeding.)

09:52:56 MR. OAKES: No further questions, Your Honor.

09:53:03 REDIRECT EXAMINATION

09:53:04 BY MS. BIANCO:

09:53:05 **Q.** Jessica, I just want to do a few followup questions
09:53:08 with you, okay?

09:53:09 **A.** Okay.

09:53:09 **Q.** In 2004 when you called the police regarding

09:53:14 information about Heidi Allen, were you taking any
09:53:17 psychiatric drugs at that time?

09:53:19 **A.** No, I was not.

09:53:20 MR. OAKES: Objection, Your Honor, beyond the
09:53:21 scope.

09:53:22 MS. BIANCO: He brought it up.

09:53:24 THE COURT: You brought it up. It's within
09:53:25 the scope.

09:53:25 **Q.** The answer was?

09:53:26 **A.** No.

09:53:26 **Q.** And why were you calling them in 2004? What did you
09:53:29 want to happen?

09:53:30 **A.** I wanted them to be found. Her to be found I mean.

09:53:36 **Q.** And in 2011, when you called the police about the
09:53:41 domestic issue, the argument with your husband, were you on
09:53:45 any psychiatric medicines then?

09:53:47 **A.** No.

09:53:47 **Q.** Now the prosecutor has asked you about your recent
09:54:03 hospitalization.

09:54:04 **A.** Yes.

09:54:05 **Q.** Why were you depressed?

09:54:08 **A.** Everything.

09:54:09 **Q.** Can you give us some parts of it?

09:54:11 **A.** Like what's going on at home, this case, and me
09:54:17 trying to find evidence, I was depressed.

09:54:20 **Q.** When you say "this case."

09:54:24 **A.** Heidi Allen case.

09:54:27 **Q.** Okay, is Heidi Allen's abduction something that seriously bothers you?

09:54:31 **A.** Yes, it does.

09:54:33 **Q.** And when you said you went to the -- on cross-examination you went to the sawmill, what made you go to the sawmill?

09:54:43 **A.** I was told that she was there.

09:54:46 **Q.** Who told you?

09:54:48 MR. OAKES: Objection, hearsay.

09:54:49 THE COURT: Sustained.

09:54:51 **Q.** You said you saw a man at the sawmill on -- on cross-examination, is that correct?

09:54:58 **A.** Yes.

09:54:59 **Q.** Who was that man?

09:55:00 **A.** I have no idea.

09:55:01 **Q.** Okay, who did that man resemble? Did you ever say anything about who that man resembled?

09:55:06 **A.** It looked like Gary's eyes but it -- I don't think because obviously Gary's here.

09:55:15 **Q.** Did you ever say anything about Michael Bohrer?

09:55:17 MR. OAKES: Objection, Your Honor.

09:55:18 THE COURT: No, I'll allow her to answer.

09:55:21 **A.** I said it wasn't Michael Bohrer.

09:55:22 **Q.** Is there any doubt in your mind that you had conversations with Roger Breckenridge about the -- about Heidi Allen, any doubt in your mind?

09:55:31 **A.** No, no.

09:55:33 **Q.** No?

09:55:34 **A.** No.

09:55:34 **Q.** And you do remember Roger specifically talking to you about Heidi Allen's disappearance.

09:55:40 **A.** Yes.

09:55:42 MS. BIANCO: No further questions.

09:55:46 THE COURT: Any recross, Mr. Oakes?

09:55:49 MR. OAKES: No thank you, Your Honor.

09:55:51 THE COURT: Ms. Howard, thank you. You can step down.

09:55:53 THE WITNESS: Thank you.

09:55:53 THE COURT: Next witness?

09:55:55 MS. PEEBLES: We have Jonathan Barkley, Judge.

09:56:12 THE COURT: The Court will take a ten-minute break. We'll come back at five after.

09:56:38 (Whereupon, there was a recess.)

10:08:43 THE COURT: Ready, Ms. Bianco?

10:08:45 MS. BIANCO: Yes, Your Honor. The defense called Jonathan Barkley.

10:08:49 THE COURT: Thank you.

10:08:52 THE CLERK: Please stand. Raise your right

10:09:30 hand, put your left on the Bible.

10:09:34 JONATHAN BARKLEY, Called as a witness, having
10:09:35 been duly sworn, was examined and testified as follows:

10:09:35 THE CLERK: Please state your name for the
10:09:42 record.

10:09:42 THE WITNESS: Jonathan Barkley.

10:09:44 THE CLERK: Spell your last name.

10:09:45 THE WITNESS: B-A-R-K-L-E-Y.

10:09:49 THE CLERK: Have a seat please.

10:09:50 THE COURT: Mr. Barkley, before we start
10:09:52 asking any questions to you, do you consent to having
10:09:56 your testimony video taped and audio taped?

10:09:58 THE WITNESS: No.

10:10:00 THE COURT: Thank you.

DIRECT EXAMINATION

10:10:03 BY MS. BIANCO:

10:10:04 **Q.** Good morning, Mr. Barkley.

10:10:06 **A.** Good morning.

10:10:06 **Q.** How old are you?

10:10:07 **A.** Twenty-seven years old.

10:10:08 **Q.** And do you reside in Oswego County?

10:10:10 **A.** Yes, ma'am.

10:10:10 **Q.** What do you do for a living?

10:10:12 **A.** Construction.

10:10:13 **Q.** I want to ask you some questions about an individual

10:10:16 named James Steen. Do you know James Steen?

10:10:19 **A.** Yes.

10:10:20 **Q.** And how do you know him?

10:10:24 **A.** I met him handful of times when I was working at Jay
10:10:32 McGuillicuddy's shop.

10:10:34 **Q.** And when was that?

10:10:36 **A.** Roughly about five years ago.

10:10:38 **Q.** Did you see James Steen the night before he killed
10:10:42 his wife in September of 2010?

10:10:45 **A.** Yes.

10:10:46 **Q.** And where did you see him?

10:10:48 **A.** At at a party.

10:10:50 **Q.** And what type of party was it?

10:10:52 **A.** Rockapalooza.

10:10:55 **Q.** Rockapalooza?

10:10:57 **A.** Yes.

10:10:57 **Q.** And what was -- and where was that, what county?

10:11:01 **A.** It was in Oswego County.

10:11:02 **Q.** Okay, what was he driving that night?

10:11:05 **A.** A motorcycle.

10:11:09 **Q.** Did he ask you a favor that night in regards to his
10:11:13 motorcycle at the party?

10:11:16 **A.** Yes.

10:11:17 **Q.** What did he ask you?

10:11:19 **A.** Asked me if I would follow him to his house to drop

10:11:22 the motorcycle off.
10:11:23 **Q.** And did you do that?
10:11:24 **A.** Yes.
10:11:25 **Q.** That night did you speak to him during the course of
10:11:28 the party about his wife Vickie?
10:11:31 **A.** No.
10:11:32 **Q.** Did you have prior discussions with him about his
10:11:35 wife Vickie and his problems?
10:11:38 MR. OAKES: Objection, Your Honor, relevance.
10:11:40 MS. BIANCO: Well, I'm going to establish the
10:11:41 relevance, Judge.
10:11:42 THE COURT: How are you going to get by
10:11:44 hearsay?
10:11:45 MS. BIANCO: It's not offered for the truth of
10:11:47 the matter asserted that -- what he said about his
10:11:49 wife, it's to establish what they said to each other
10:11:52 that night or the night before.
10:11:53 THE COURT: I'll allow it.
10:11:55 **Q.** What did James Steen relate to you about his wife
10:11:58 and problems he was having?
10:12:00 **A.** He said that -- I don't -- I don't want to swear.
10:12:07 THE COURT: Go ahead. You won't offend
10:12:09 anybody.
10:12:09 **Q.** Unfortunately we're all swearing.
10:12:12 **A.** He said, "One day this bitch is going to push me to

10:12:14 my cracking point."

10:12:16 **Q.** Now, at the party in October of 2010, did you leave with James Steen that night?

10:12:25 **A.** No.

10:12:25 **Q.** Are you aware of how he got home?

10:12:29 **A.** Yeah.

10:12:31 **Q.** How did he get transportation home?

10:12:34 **A.** He took my truck.

10:12:37 **Q.** And where did you go?

10:12:38 **A.** To Jay McGuillicuddy's house.

10:12:42 **Q.** And why did you allow him to take your truck?

10:12:45 **A.** Because I was intoxicated.

10:12:48 **Q.** And where did you sleep that night in September of 2010?

10:12:51 **A.** Jay McGuillicuddy's living room.

10:12:55 **Q.** And when you woke up the next morning, where were you?

10:12:59 **A.** In Jay McGuillicuddy's living room.

10:13:02 **Q.** And who was in the house?

10:13:03 **A.** No one that I've remembered.

10:13:06 **Q.** Okay, where was your truck that next morning?

10:13:11 **A.** On the news.

10:13:12 **Q.** Okay, and what did you -- what did you see on the news about your truck?

10:13:17 **A.** That it was used in a murder.

10:13:20 **Q.** What did you do when you saw your truck on the news?

10:13:25 **A.** I started wondering what happened or -- and I tried to call Steen.

10:13:31 THE COURT: Is that what we're getting to, the phone calls?

10:13:36 MS. BIANCO: Yes.

10:13:37 THE COURT: Thank you.

10:13:37 **Q.** You tried to call Steen. What number were you calling from?

10:13:41 **A.** 935-1042.

10:13:45 **Q.** And that was whose phone?

10:13:46 **A.** Mine.

10:13:46 **Q.** Okay, and did you call him September twelfth, 2010 at approximately 12:11 p.m. about your truck?

10:13:57 **A.** Yes.

10:13:57 **Q.** Did he answer?

10:13:59 **A.** No.

10:14:00 **Q.** Who'd you call next or what happened next?

10:14:02 **A.** I tried to call Jay McGillicuddy.

10:14:08 **Q.** And what happened?

10:14:09 **A.** No answer.

10:14:11 **Q.** Okay, at 12:12, one minute later on your -- your telephone, did you send a text that said, "Heidi question mark ciao?"

10:14:25 **A.** No.

10:14:25 **Q.** You know that that particular text came from your phone, correct?

10:14:31 MR. OAKES: Objection, Your Honor.

10:14:33 THE COURT: I'm confused in this line of questioning. He just said he didn't send it.

10:14:37 MS. BIANCO: He didn't send it.

10:14:39 **Q.** Was that your phone that that text was sent from?

10:14:42 **A.** Yes.

10:14:42 MR. OAKES: Objection, foundation.

10:14:42 THE COURT: Foundation for how he knows.

10:14:45 MS. BIANCO: Judge, may I look at Exhibit 45 please?

10:14:47 THE COURT: Sure, yes.

(Whereupon, there was a pause in the proceeding).

10:14:49 THE COURT: Did you find it?

10:14:59 MS. BIANCO: I have it. Now I just got to find the right page.

10:15:21 **Q.** Showing you what's been marked Defendant's Exhibit 45, I'm going to ask you to take a look at entry number eighty-eight. Is that your phone number that's making a call, 935-1042?

10:15:35 **A.** Yes, ma'am.

10:15:37 **Q.** And who is it calling? Would that be James Steen's number?

10:15:46 **A.** I don't remember.

10:15:50 **Q.** But you do know you made a call.

10:15:52 **A.** I do know I did make a call, yes.

10:15:54 **Q.** Okay, and I'm going to show you what's been marked
10:15:57 or item number ninety on page thirty-three of Exhibit 45.
10:16:05 Is that your phone number, 935-1042?

10:16:08 **A.** Yes.

10:16:09 **Q.** And the text, "Heidi question mark ciao" came from
10:16:13 your phone number?

10:16:14 **A.** Yes.

10:16:15 **Q.** Do you know who sent that text?

10:16:17 **A.** No.

10:16:18 **Q.** But you do know it came from your phone.

10:16:20 **A.** Yes.

10:16:21 MS. BIANCO: No further questions.

10:16:27 THE COURT: Just a second, Mr. Oakes.

10:16:31 MR. OAKES: Certainly.

10:16:34 (Whereupon, there was a pause in the
10:16:39 proceeding.)

10:16:39 THE COURT: Go ahead.

10:16:50 CROSS-EXAMINATION

10:16:50 BY MR. OAKES:

10:16:51 **Q.** Mr. Barkley, the night before Vickie West was
10:17:08 killed, you were at a party with James Steen?

10:17:10 **A.** Yes.

10:17:11 **Q.** He was intoxicated and had been drinking that night?
10:17:16 **A.** He --
10:17:17 **Q.** Mr. Steen had been drinking that night?
10:17:19 **A.** Yes.
10:17:20 **Q.** So he asked you before he got too intoxicated if he
10:17:25 could drive his motorcycle home and you would bring him
10:17:28 back to the party, essentially follow him to -- bring him
10:17:30 back to the party so he wouldn't have to drive his bike
10:17:33 later?
10:17:33 **A.** Yes.
10:17:33 **Q.** And you did that?
10:17:34 **A.** Yes.
10:17:35 **Q.** And at some point later that night you determined
10:17:40 that you were too drunk to drive?
10:17:43 **A.** Yes.
10:17:43 **Q.** So you rode with Jay McGuillicuddy?
10:17:47 **A.** I called him to get a ride.
10:17:49 **Q.** Okay.
10:17:49 **A.** I don't -- I don't remember who -- exactly who came
10:17:53 and picked me up, but I did get a ride out of there.
10:17:58 **Q.** And where did you leave your vehicle at that time?
10:18:01 **A.** At the party.
10:18:03 **Q.** And did you leave your keys with anybody?
10:18:05 **A.** No, I left them in the cup holder.
10:18:09 **Q.** Did you give James Steen permission to use your

10:18:13 truck that night or to drive it later?

10:18:15 **A.** I told him to take it to his house that night and I would come get it in the morning.

10:18:23 **Q.** And so the next morning when you woke up, you were at Jay McGuillicuddy's house?

10:18:28 **A.** Yes.

10:18:29 **Q.** And there was nobody else in the home as you remember?

10:18:35 **A.** Not that I remember.

10:18:37 **Q.** Would you still have been intoxicated at that point?

10:18:41 **A.** Yeah.

10:18:44 **Q.** Where was Mr. McGuillicuddy if you know?

10:18:47 **A.** I don't know.

10:18:50 **Q.** And you said at some point you got a call from your brother?

10:18:55 **A.** Yes.

10:18:57 **Q.** And he called you on your cell phone?

10:19:00 **A.** Yes.

10:19:01 **Q.** And is that how it is you knew you had your cell phone with you?

10:19:05 **A.** What's that?

10:19:05 **Q.** Is that how you know you had your cell phone with you, because your brother reached you on your cell phone?

10:19:10 **A.** Yes.

10:19:11 **Q.** Okay. And so your brother told you your truck was

10:19:15 on the news?

10:19:16 **A.** Well, I had already seen my truck on the news, and then my brother had called me and said, "Do you know that your truck is on the news?"

10:19:25 **Q.** What time was that ballpark?

10:19:27 **A.** I -- I can't recall.

10:19:30 **Q.** Okay, so when you saw your truck on the news, did -- you tried to get a hold of Jay Steen?

10:19:39 **A.** Yes.

10:19:41 **Q.** Why were you calling him?

10:19:43 **A.** To find out why my truck was on the news.

10:19:46 **Q.** And you weren't able to reach him and you left a voicemail or did you leave a voicemail?

10:19:52 **A.** No, I just hung up.

10:19:54 **Q.** Now Ms. Bianco showed you a text that said, "Heidi question mark ciao." Did you send that?

10:20:02 **A.** No, sir.

10:20:04 **Q.** Mr. Barkley, can you spell the Italian word ciao for me?

10:20:11 **A.** I -- I don't know how to spell it.

10:20:15 **Q.** Did you know Heidi Allen?

10:20:17 **A.** No, sir.

10:20:18 **Q.** Had you ever met Heidi Allen?

10:20:21 **A.** No, sir.

10:20:22 **Q.** Had you ever had any discussions with James Steen

10:20:25 prior to the night regarding Heidi Allen?
10:20:27 **A.** No.
10:20:28 **Q.** Let me ask you, you said you were born in 1985, is
10:20:34 that correct?
10:20:34 **A.** 1987, sir.
10:20:36 **Q.** 1987. So when -- when's your birthday, what day of
10:20:43 the month?
10:20:43 **A.** On the sixth.
10:20:44 **Q.** Of which month?
10:20:45 **A.** March.
10:20:46 **Q.** Sixth of March, okay. So in April of 1994 you would
10:20:52 have been seven years old?
10:20:54 **A.** Yeah.
10:20:56 **Q.** Okay, where'd you live at that time?
10:20:59 **A.** In West Monroe in a trailer park.
10:21:06 **Q.** With who?
10:21:07 **A.** My parents.
10:21:09 MS. BIANCO: Objection to the relevance of
10:21:10 this line of questioning. No one's accusing him of
10:21:13 being involved in Heidi Allen's abduction.
10:21:15 THE COURT: What's the relevance?
10:21:17 MR. OAKES: I'm just trying to show that he
10:21:20 has no personal knowledge of the incident, Your Honor,
10:21:22 that's all.
10:21:24 THE COURT: Okay, ask him if he has any

10:21:24 personal knowledge.

10:21:25 **Q.** Okay, do you have any personal knowledge regarding
10:21:27 the abduction of Heidi Allen?

10:21:29 **A.** No, sir.

10:21:32 **Q.** Did you -- did you send the text, "Heidi question
10:21:37 mark ciao" to James Steen?

10:21:40 **A.** No, sir.

10:21:42 **Q.** Ms. Bianco showed you electronic records or records
10:21:47 from cell phones. You recognize your number there being
10:21:50 associated with that text though, right?

10:21:51 **A.** Yes.

10:21:52 **Q.** Can you offer any explanation for the Court as to
10:21:57 where that came from?

10:21:58 **A.** I don't recall how that -- how that happened. I
10:22:02 don't know.

10:22:02 **Q.** Let me ask you, are you familiar with or have you
10:22:10 ever seen anybody use a spoofing program for spoofing
10:22:15 numbers, telephone numbers?

10:22:17 **A.** No.

10:22:18 **Q.** Okay.

10:22:47 (Whereupon, there was a pause in the
10:23:05 proceeding.)

10:23:05 **Q.** Mr. Barkley --

10:23:11 MR. OAKES: Actually, no further questions,
10:23:13 Your Honor.

10:23:15 MS. BIANCO: Just a couple of followups.

10:23:17 THE COURT: Sure.

10:23:19 REDIRECT EXAMINATION

10:23:20 BY MS. BIANCO:

10:23:21 **Q.** Mr. Barkley, when you called Mr. Steen, the reason
10:23:29 you called him that day was you wanted to know what was
10:23:33 going on with your truck, is that right?

10:23:35 **A.** That's correct.

10:23:36 **Q.** And you had no idea why it was on the news.

10:23:39 **A.** No, ma'am.

10:23:40 **Q.** And you -- had you known or been told what was going
10:23:43 on, why the truck was on the news? What was your
10:23:48 understanding?

10:23:48 **A.** My understanding that it was used in a crime.

10:23:51 **Q.** And you said about a murder?

10:23:54 **A.** Yeah.

10:23:54 **Q.** And how did you know that?

10:23:56 **A.** When I got a -- when I got through to Jay, Jay
10:24:02 McGuillicuddy, he told me what had happened.

10:24:05 **Q.** And that was between the time of the first -- right
10:24:09 after your first call you had spoken to Jay McGuillicuddy,
10:24:13 is that right?

10:24:13 **A.** Yes, ma'am.

10:24:14 **Q.** And you found out that that -- somehow Steen was
10:24:16 involved in a murder of his wife?

10:24:18 **A.** Yes, ma'am.

10:24:19 MS. BIANCO: No further questions. Thank you, sir.

10:24:27 THE COURT: Mr. Oakes?

10:24:28 MR. OAKES: No further questions, Your Honor.

10:24:29 THE COURT: Sir, you can step down. Thank you.

10:24:31 THE WITNESS: Thank you.

10:24:33 THE COURT: Next witness?

10:24:34 MS. PEEBLES: The defense calls Deborah Vecchio.

10:24:41 THE COURT: Deb Vecchio?

10:24:43 MS. PEEBLES: Vecchio.

10:25:05 THE CLERK: Please stand. Raise your right hand, put your left on the Bible.

10:25:25 DEBORAH VECCHIO, Called as a witness, having been duly sworn, was examined and testified as follows:

10:25:27 THE CLERK: Please state your name for the record.

10:25:36 THE WITNESS: Deb Vecchio.

10:25:37 THE CLERK: Spell your last name.

10:25:38 THE WITNESS: V as in Victor, E-C-C-H-I-O.

10:25:42 THE CLERK: Have a seat please.

10:25:44 THE COURT: Ms. Vecchio, before you're asked any questions, do you consent to having your testimony

10:25:48 video and audio taped?

10:25:49 THE WITNESS: I do not.

10:25:50 THE COURT: You do not. Thank you.

10:25:51 THE WITNESS: Yes.

DIRECT EXAMINATION

10:25:54 BY MS. PEEBLES:

10:25:55 **Q.** Good morning, Ms. Vecchio. How old are you?

10:25:57 **A.** I'm fifty-eight.

10:25:58 **Q.** And what is your occupation?

10:26:00 **A.** I'm a licensed social worker.

10:26:02 **Q.** Where do you live?

10:26:03 **A.** On Rice Road in Parish.

10:26:04 **Q.** How long have you lived on Rice Road?

10:26:07 **A.** Since I was eighteen.

10:26:08 **Q.** In the same house?

10:26:10 **A.** Yes.

10:26:10 **Q.** And who do you live with?

10:26:12 **A.** My husband.

10:26:13 **Q.** Who owns the property next to yours?

10:26:16 **A.** My father.

10:26:17 **Q.** And what is the address?

10:26:19 **A.** 46 Rice Road I believe.

10:26:22 **Q.** Well, when did your father acquire the property next
10:26:25 to yours on Rice Road?

10:26:27 **A.** Oh, boy. It belonged to his girlfriend. I believe

10:26:32 it was ninety or ninety-one.

10:26:32 **Q.** And prior to your father owing the property, his girlfriend owned the property?

10:26:38 **A.** Joyce Neat.

10:26:41 **Q.** And did your father when he acquired the property at Rice Road rent to any tenants?

10:26:50 **A.** He did.

10:26:51 **Q.** And why was that?

10:26:53 **A.** He lived in Florida in the wintertime and he had a trailer on the property that he leased out or I helped him to lease out.

10:27:03 **Q.** And what was your role in assisting your father in renting out that trailer?

10:27:07 **A.** I would interview the clients, and most of the time I would interview the clients and lease for him and take care of the trailer while he was gone.

10:27:16 **Q.** Now, was there any other residence on that property aside from the trailer that you're referring to?

10:27:20 **A.** There's an apartment that my father lived in.

10:27:23 **Q.** And when did he -- when did the apartment come about?

10:27:29 **A.** Early nineties.

10:27:31 **Q.** And is there any type of structure attached to the apartment?

10:27:35 **A.** Yes. There's a -- well, it -- it was a garage, it

10:27:41 was an open garage, there was no door on it, it was like a
10:27:44 lean-to type garage off of the apartment.

10:27:46 **Q.** So when your father first acquired the property, was
10:27:49 that apartment that's attached to the garage in existence?

10:27:53 **A.** We were just working on it.

10:27:55 **Q.** Now, you said your father goes to Florida or was
10:27:58 going to Florida in the wintertime?

10:28:00 **A.** Correct.

10:28:01 **Q.** And do you recall what month he would leave for
10:28:03 Florida?

10:28:04 **A.** It would vary. November, December, sometimes even
10:28:11 January.

10:28:11 **Q.** And when would he return?

10:28:13 **A.** Usually around April.

10:28:15 **Q.** And if you were renting out the trailer in his
10:28:19 absence, what typically would the lease terms be?

10:28:23 **A.** I don't know what you mean.

10:28:28 **Q.** Well, I'll reword the question.

10:28:30 **A.** Okay.

10:28:30 **Q.** What would the length of time be for the lease when
10:28:34 your father was leaving for Florida?

10:28:36 **A.** Well, he was very particular about who he rented to,
10:28:39 so usually it would be for a year, but there was a few
10:28:45 occasions where I had rented the apartment. Because he
10:28:49 didn't meet the people, the lease would only be for a few

10:28:52 months until he returned back.

10:28:54 **Q.** Now when your father returned from Florida, would he then reside in the trailer or the apartment?

10:29:01 **A.** The apartment.

10:29:04 **Q.** Ms. Vecchio, I'm going to hand you what's been marked as Defense Exhibit 84 and ask if you can identify this document?

10:29:19 **A.** This is a lease that I had signed to some tenants that I rented in 1992.

10:29:29 **Q.** And do you recall the tenants?

10:29:30 **A.** Yes, I do.

10:29:32 MS. PEEBLES: Your Honor --

10:29:33 **Q.** Is your signature on that document?

10:29:35 **A.** Yes, it is.

10:29:36 MS. PEEBLES: Your Honor, at this time I'd like to offer exhibit eighty -- did I say eighty-two? Eighty-four.

10:29:42 MR. OAKES: I think I know what it is but I haven't seen the document.

10:29:45 MS. PEEBLES: Oh, it's the Purdy lease.

10:29:50 MR. OAKES: Can I just see it?

10:29:57 (Whereupon, there was a pause in the proceeding.)

10:30:06 MR. OAKES: No objection, Your Honor.

10:30:07 THE COURT: Exhibit 84 is in without

10:30:09 objection.

(Defendant's Exhibit No. 84 was received in evidence). 10:30:10

10:30:10 **Q.** Now, Ms. Vecchio, you executed that lease. Who -- 10:30:14 who was the tenant that you had sign that lease?

10:30:16 **A.** Darcy and Tom Rathbun, at the time Darcy Russell and 10:30:22 Tom Rathbun.

10:30:22 THE COURT: I'm sorry, Darcy Russell?

10:30:24 THE WITNESS: Yes, that was her maiden name.

10:30:26 THE COURT: Thomas what?

10:30:27 THE WITNESS: Rathbun.

10:30:28 **Q.** And what was the length of time on that lease? How 10:30:34 long was that lease for?

10:30:35 **A.** I believe it was for six months.

10:30:41 **Q.** So May first?

10:30:42 **A.** Yes, May first.

10:30:44 **Q.** Of 1993?

10:30:45 **A.** Correct.

10:30:46 **Q.** Now, do you recall renting the trailer to Ms. 10:30:52 Russell at the time?

10:30:53 **A.** Yes, I do.

10:30:54 **Q.** And how do you remember renting it to her?

10:30:59 **A.** They were looking for a place to stay, they weren't 10:31:02 married, had planned on getting married, they moved in, 10:31:05 seemed like a nice couple.

10:31:07 **Q.** And do you recall how long they stayed in the trailer?

10:31:11 **A.** Not one-hundred percent, no, I don't.

10:31:14 **Q.** When did your father return from Florida?

10:31:16 **A.** He returned probably April or May.

10:31:19 **Q.** And did your father have any input with regard to whether or not they remained in the trailer?

10:31:24 **A.** Yes. He did not like them.

10:31:26 **Q.** He did not like them?

10:31:27 **A.** He did not like them as tenants, no.

10:31:29 **Q.** Why -- why did your father not like them?

10:31:31 **A.** He said that they were causing a lot of trouble in the trailer, a lot of damage, and wanted them to move out.

10:31:39 **Q.** Now, do you know an individual by the name of Jennifer Wescott?

10:31:44 **A.** Not personally, no.

10:31:46 **Q.** Do you know who she is?

10:31:48 **A.** Yes.

10:31:48 **Q.** How do you know her?

10:31:49 **A.** There was a period of time when I believe it was her mother was staying in the trailer during the winter months because of some work that was being done to her house.

10:32:01 MR. OAKES: Objection.

10:32:01 THE COURT: What winter are we talking about?

10:32:04 **Q.** What winter are we talking about?

10:32:06 **A.** I'm not really one-hundred percent sure.

10:32:09 **Q.** To the best of your recollection.

10:32:10 **A.** I'm guessing it was ninety-three, ninety-four, 10:32:13 somewhere during that time.

10:32:14 MR. OAKES: Objection, Your Honor. I guess 10:32:15 I'm going to object. The witness is saying she's not 10:32:17 sure, she's guessing.

10:32:18 THE COURT: Well, that might affect the 10:32:20 weight, but I'm trying to find out she knows Jennifer 10:32:23 Wescott's mother is what you're saying, right?

10:32:25 MS. PEEBLES: Yes.

10:32:26 THE WITNESS: I also had an altercation with 10:32:27 Jennifer.

10:32:29 THE COURT: I'll allow it.

10:32:29 MR. OAKES: Okay.

10:32:30 THE COURT: It's weight. Go ahead.

10:32:32 **Q.** I'm going to approach and hand you Defense Exhibit 10:32:34 86. Do you recognize the person or who is depicted on 10:32:46 Exhibit 86?

10:32:47 **A.** Yes, I do.

10:32:48 **Q.** Who is that?

10:32:49 **A.** It's Jennifer Wescott.

10:32:51 **Q.** I'm also going to approach and hand you what's been 10:32:57 marked as Defense Exhibit 87. Do you recognize the person 10:33:07 depicted in Defense Exhibit 87?

10:33:10 **A.** Yes. Mr. Breckenridge, Roger Breckenridge.
10:33:14 MS. PEEBLES: Your Honor, at this time I'd
10:33:16 like to offer eighty-six and eighty-seven.
10:33:18 THE COURT: Any voir dire about the IDs or any
10:33:23 objection?
10:33:24 MR. OAKES: Well, on the voir dire if I may,
10:33:29 Your Honor.

VOIR DIRE EXAMINATION
10:33:30 BY MR. OAKES:

10:33:30 **Q.** Ms. Vecchio, regarding Exhibit 86.
10:33:35 **A.** Yes.
10:33:37 **Q.** The picture. You said you believe that's Jennifer
10:33:39 Wescott?
10:33:40 **A.** Yes.
10:33:40 **Q.** Where did you first see that photograph?
10:33:43 **A.** In the newspaper. I was -- I recognized her from a
10:33:47 picture in the paper, or online, I'm not really sure which
10:33:49 one.
10:33:50 **Q.** And when was that?
10:33:51 **A.** When all this came about last summer.
10:33:56 **Q.** And prior to that, when was the last time you had
10:34:00 seen Jennifer Wescott?
10:34:02 **A.** Back in the nineties. She was young.
10:34:06 **Q.** And the individual, the other photograph, you said
10:34:12 you recognize that to be who?

10:34:14 **A.** This isn't much older than what I remember, but Mr. Breckenridge.

10:34:19 **Q.** And where did you first see that photograph?

10:34:23 **A.** Probably in the newspaper or something, this particular one or one similar.

10:34:28 **Q.** Okay, and when it was captioned in the paper, it had his name with it?

10:34:36 **A.** Yes.

10:34:37 **Q.** And prior -- well, had you met Mr. Breckenridge prior to seeing it in the newspaper?

10:34:45 **A.** I never met him personally. I saw him at certain times back in the nineties, but I never had a conversation with him.

10:34:51 **Q.** Okay, so you -- prior to seeing him in the paper, you didn't know his name, you didn't know who that was?

10:35:00 **A.** No, no.

10:35:05 **Q.** But as to Jennifer Wescott, prior to seeing the paper did you know her name? The same question.

10:35:12 **A.** When I saw the picture, her picture in the paper, I recognized her as a girl that was staying in my father's trailer at one point.

10:35:25 MR. OAKES: Your Honor, I guess I'm going to object on the admission of the photographs. Again, doesn't know the names of the individuals. Certainly as to Mr. Breckenridge, she says she doesn't know him,

10:35:37 she had seen the individual but didn't know him by
10:35:40 name, didn't know who he was prior to seeing it in the
10:35:43 paper.

10:35:44 MS. PEEBLES: Well, I can lay some more
10:35:46 foundation with that, Judge.

10:35:46 THE COURT: I'll let eighty-six in. I'm a
10:35:48 little skeptical on eighty-seven.

(Defendant's Exhibit No. 86 was received in
evidence).

10:35:50 BY MS. PEEBLES:

10:35:50 **Q.** Ms. Vecchio, when you were renting to Jennifer
10:35:53 Wescott's family, did you --

10:35:57 THE COURT: That's a mischaracterization. She
10:35:59 was never renting to her family --

MS. PEEBLES: To her mother.

10:36:01 THE COURT: -- her mother was staying in the
10:36:02 trailer.

10:36:02 **Q.** Were you renting to the Wescott family?

10:36:05 **A.** I had no contact with this family. Joyce
10:36:09 actually -- what I recall is when the Rathbuns had moved
10:36:11 out, Joyce had rented to her mother, Jennifer Wescott's
10:36:16 mother, for a short period of time during the winter
10:36:18 because I was told that they were having work done on their
10:36:21 house.

10:36:21 THE COURT: Joyce? Isn't it Darcy?

10:36:23 THE WITNESS: No. Joyce Neat is the one that
10:36:26 owned the trailer. She's my father's girlfriend.

10:36:29 THE COURT: Okay, thank you.

10:36:29 **A.** And as far as I can remember, Darcy and Tom had
10:36:33 moved out and the Wescotts had moved in.

10:36:36 **Q.** All right. Now, Ms. Vecchio, you say -- you stated
10:36:39 that you recognized Ms. Wescott as the girl that was
10:36:42 staying at the trailer when her mother was there, is that
10:36:45 correct?

10:36:45 **A.** Correct, yes.

10:36:46 **Q.** Now did you know she had a boyfriend at the time?

10:36:49 **A.** I knew she had a friend, I didn't know what their
10:36:53 relationship was.

10:36:54 **Q.** All right, and did you ever have any type of
10:36:57 confrontation with Jennifer Wescott?

10:36:59 **A.** I did.

10:37:00 **Q.** Who was present when you had the confrontation with
10:37:02 Jennifer Wescott?

10:37:03 **A.** Her boyfriend or her friend.

10:37:05 **Q.** Did you recognize her boyfriend or friend as the
10:37:08 individual depicted in Exhibit 87?

10:37:11 **A.** I did. Much older, but I did.

10:37:14 **Q.** And he looks like the person that was standing
10:37:16 behind her at the time?

10:37:18 **A.** Correct.

10:37:18 **Q.** Could you please tell the Court exactly what the nature of the confrontation was if you remember?

10:37:23 MR. OAKES: Objection, Your Honor. I guess I'm asking for foundation. When did this occur?

10:37:28 THE COURT: She asked the proper question. I'll allow it. We do need a time frame. When did it happen?

10:37:35 **Q.** When would this have been, Ms. Vecchio?

10:37:37 **A.** To the best of my recollection.

10:37:38 **Q.** Yes.

10:37:39 **A.** This would have been in ninety-three, ninety-four.

10:37:42 **Q.** All right, and could you please describe the nature of the confrontation that you had?

10:37:47 **A.** She had been staying in the trailer. I had seen her in and out a number of times. There was a lot of cars in and out of the driveway at different times of the day and night. I knew that my father would be coming back soon from Florida, and I told her that she had to leave. I confronted her in the driveway and said we didn't rent to you, we rented to your family, and my dad will be back and he will not be happy that you're here and you have to leave.

10:38:18 **Q.** And what -- as a result of your confrontation with Ms. Wescott, did anything occur after -- after that?

10:38:24 **A.** She left. Her and her boyfriend left shortly after

10:38:28 that, or her friend, I'm sorry.

10:38:31 **Q.** Did you remember anything about the person she was with in particular when you had this confrontation with her?

10:38:43 **A.** He was standing maybe ten feet behind her, looked -- I was kind of afraid of him.

10:38:50 **Q.** You were afraid of him?

10:38:51 **A.** Afraid of him, yes.

10:38:54 **Q.** Now, Ms. Vecchio, I want to ask you some questions about your son, Darron Vecchio.

10:39:02 **A.** Yes.

10:39:02 **Q.** How old is your son right now?

10:39:05 **A.** Oh, God. He was born in seventy-seven. Thirty-four, thirty-five.

10:39:11 **Q.** Roughly.

10:39:12 **A.** Okay.

10:39:13 **Q.** Does he currently reside with you?

10:39:15 **A.** No, he doesn't.

10:39:15 **Q.** Did he grow up living at 44 Rice Road?

10:39:18 **A.** He did.

10:39:19 **Q.** Did he build a structure in the woods off of Rice Road?

10:39:22 **A.** He did.

10:39:22 **Q.** Do you know when he constructed this structure?

10:39:25 **A.** He was thirteen, fourteen, fifteen, somewhere in

10:39:28 there, took him a few years to build it.
10:39:30 **Q.** Do you know whose property it was that he was
10:39:32 building it on?
10:39:33 **A.** It was -- it belonged to Scorzelis, S-C-O-R-Z-E-L-I.
10:39:40 They were the neighbors at the time.
10:39:42 **Q.** And did he have permission from them to --
10:39:44 **A.** Yes, he did.
10:39:45 **Q.** And as he was constructing this structure, did you
10:39:51 ever see it?
10:39:51 **A.** Yes.
10:39:52 **Q.** Did you see it while he was building it?
10:39:56 **A.** Occasionally, yes.
10:39:57 **Q.** And how did you get back to the property where he
10:40:01 was building this?
10:40:01 **A.** He had a path that went back from the woods, from
10:40:04 the road to the -- into the woods.
10:40:07 **Q.** Now, when -- when did you go back to see this
10:40:13 completed structure that your son built back there in the
10:40:15 woods off Rice Road?
10:40:17 **A.** When?
10:40:18 **Q.** Do you remember when?
10:40:20 **A.** What year?
10:40:21 **Q.** Yes.
10:40:21 **A.** I don't know.
10:40:22 **Q.** Do you remember seeing it when it was finished?

10:40:26 **A.** Yes.

10:40:26 **Q.** Can you please describe it?

10:40:27 **A.** It was quite elaborate. It was -- had a roof, had
10:40:31 floors, had carpeting, had bunk beds, shelving, a fire pit.
10:40:37 It had everything but running water and lights.

10:40:40 **Q.** Did it have a door?

10:40:41 **A.** It did. A couple of them.

10:40:43 **Q.** Was it completely enclosed?

10:40:45 **A.** Yes.

10:40:46 **Q.** Were there any windows?

10:40:48 **A.** Yes.

10:40:49 **Q.** How many windows, do you know? If you know.

10:40:54 **A.** I would say two.

10:40:56 **Q.** Now, did there come a point in time when you
10:40:59 contacted someone about this structure that your son built
10:41:01 in the woods off of Rice Road?

10:41:03 **A.** I did.

10:41:04 **Q.** Who did you contact?

10:41:05 **A.** John O'Brien.

10:41:07 **Q.** Why?

10:41:07 **A.** I had read in the newspaper that they were looking
10:41:09 for a cabin. I wasn't -- I knew that my son's camp had
10:41:14 been back -- was there, and last I knew, I -- in the early
10:41:18 two-thousands my daughter and I had walked back there and
10:41:20 it was still standing up. I e-mailed him and asked him if

10:41:24 that camp had been checked because I knew that a lot of
10:41:27 kids hung out there during that time.

10:41:31 **Q.** All right, now I want to ask you some questions
10:41:42 about an individual named Michael Bohrer. Do you know
10:41:47 Michael Bohrer?

10:41:47 **A.** Yes, I do.

10:41:47 **Q.** How do you know him?

10:41:48 **A.** I used to take my computer to his shop and I also
10:41:51 was employed at East Coast Resorts at the same time he was.

10:41:54 **Q.** And where was this East Coast Resorts?

10:41:57 **A.** In Parish.

10:42:00 **Q.** So that wasn't in his -- at the time was not in his
10:42:04 computer shop, Medspars?

10:42:05 **A.** No.

10:42:05 **Q.** And when you refer to his computer shop, are you
10:42:07 referring to Medspars?

10:42:08 **A.** Yes, I am.

10:42:09 **Q.** When did you first meet Michael Bohrer if you
10:42:13 remember?

10:42:13 **A.** I don't remember the year. I probably had some
10:42:19 problems with my computer and went to see him.

10:42:22 **Q.** How many years had you known Michael Bohrer?

10:42:30 **A.** It was probably the early nineties.

10:42:37 **Q.** Did you ever -- did -- strike that. Do you know
10:42:41 whether Michael Bohrer had a girlfriend?

10:42:44 **A.** He did.

10:42:44 **Q.** What was her name?

10:42:46 **A.** Her name is Tina.

10:42:49 **Q.** Did you ever have any interaction with his girlfriend Tina?

10:42:56 **A.** I did. She also worked at East Coast. A few times she would come in and she'd be very upset or --

10:43:04 MR. OAKES: Objection, Your Honor, non-responsive.

10:43:07 THE COURT: I'll sustain it.

10:43:08 THE WITNESS: She was --

10:43:11 **Q.** He sustained. I have to ask you another question. It's okay. Did you ever notice anything about Tina's personal appearance?

10:43:18 **A.** Yes.

10:43:20 **Q.** And could you please --

10:43:20 MR. OAKES: Objection, relevance, Your Honor.

10:43:21 THE COURT: Where are you going with this? Are you getting to some alleged statement against penal interest?

10:43:30 MS. PEEBLES: No, no statement.

10:43:31 THE COURT: Then how is it relevant? I'm going to sustain the objection.

10:43:35 **Q.** Well, did you have interaction between Mr. Bohrer and Tina when they were together?

10:43:42 **A.** Only at work.

10:43:45 **Q.** Did you ever notice any physical injuries with Tina
10:44:05 when she was with Michael Bohrer?

10:44:07 **A.** Yes.

10:44:08 MR. OAKES: Objection, Your Honor, relevance.

10:44:09 THE COURT: Sustained.

10:44:10 MS. PEEBLES: No further questions. Thank
10:44:11 you, Ms. Vecchio. Your Honor, I'd like to offer
10:44:16 Exhibit 87. I know that the Court kind of reserved and
10:44:19 I don't know if --

10:44:19 THE COURT: I'll accept it. Foundation was
10:44:21 laid. Ms. Peebles, do you have eighty-six and
10:44:25 eighty-seven.

10:44:27 MS. PEEBLES: I think they're right up there.

10:44:34 THE COURT: Eighty-six and eighty-seven are
10:44:37 in.

(Defendant's Exhibit No. 87 was received in
10:44:37 evidence).

10:44:37 MS. PEEBLES: Thank you.

10:44:47 THE COURT: Mr. Oakes, here they are.

10:44:49 MR. OAKES: Thank you, Your Honor.

10:44:51 CROSS-EXAMINATION

10:44:51 BY MR. OAKES:

10:44:52 **Q.** Good morning, Mrs. Vecchio.

10:45:23 **A.** Good morning.

10:45:23 **Q.** How are you today?

10:45:25 **A.** I'm good.

10:45:26 **Q.** Mrs. Vecchio, you've lived at your address on Rice Road for approximately forty years?

10:45:31 **A.** Um hum.

10:45:32 **Q.** And you're married to your husband David?

10:45:35 **A.** I am.

10:45:36 **Q.** And you have two sons, David and Darron?

10:45:38 **A.** Yes.

10:45:39 **Q.** What's your daughter's name?

10:45:41 **A.** Dorice (ph).

10:45:41 **Q.** Dorice, okay. And you said your dad, his name is Walter Rice?

10:45:46 **A.** Correct.

10:45:47 **Q.** And he owns a property -- well, it's not right adjacent, right next to your property, but down the road just a little ways, right?

10:45:54 **A.** Yes, um hum, yes.

10:45:56 **Q.** And so you live on the north side of Rice Road?

10:45:59 **A.** Um hum, yes.

10:46:00 **Q.** And your dad's property is also on the north side, right?

10:46:03 **A.** Correct.

10:46:05 **Q.** And his is a little bit closer to the Route 11 side?

10:46:07 **A.** Yes.

10:46:08 **Q.** Okay, and you're a little bit closer to Bengal Road,
10:46:12 correct?

10:46:12 **A.** Correct.

10:46:13 **Q.** Now, currently there's no trailer on the property,
10:46:18 correct?

10:46:19 **A.** That's correct.

10:46:20 **Q.** There is -- there is a structure on the property
10:46:24 though, right?

10:46:24 **A.** Yes.

10:46:25 **Q.** And in that structure there's essentially a trailer
10:46:28 on the inside?

10:46:30 **A.** No, it's an apartment.

10:46:32 **Q.** It's an apartment?

10:46:33 **A.** Yes.

10:46:33 **Q.** And that used to be a garage but was made into an
10:46:38 apartment, converted at some point?

10:46:40 **A.** Correct.

10:46:40 **Q.** And then kind of a lean-to stall was put on it,
10:46:45 correct?

10:46:45 **A.** It was a four-car garage, half of it was made into
10:46:49 an apartment which left a garage next to that and lean-to
10:46:53 off of the garage.

10:46:54 **Q.** Well, the dimensions that it is right now, they're
10:46:58 not the same dimensions they were back in 1994 though,
10:47:01 correct?

10:47:02 A. No, no.

10:47:04 Q. It's been built on and expanded over the years?

10:47:06 A. Off the back and the lean-to on the side, yes.

10:47:09 Q. So back in 1994, how big was the structure itself back then?

10:47:15 A. It was the -- it was the four-car garage of which we were turning half of that into an apartment.

10:47:21 Q. Okay, and with the four stalls, were those four stalls lined up right next to each other or were there two in the front, two in the back?

10:47:31 A. Yeah. This was long, it was a long building.

10:47:33 Q. And you said you started converting that into an apartment for your father in what year?

10:47:37 A. It was the early nineties.

10:47:40 Q. When did your dad move into it?

10:47:42 A. About that time. He started out in the trailer.

10:47:48 Q. Okay. Well, would Darron have still been in high school at that time?

10:47:54 A. Yes.

10:47:54 Q. And was your dad moved into the apartment by the time Darron had graduated?

10:48:00 A. Oh, yes, yes.

10:48:02 Q. And Darron graduated in 1993, right?

10:48:08 A. You probably know more about that than I do. Right around that time, yes.

10:48:13 **Q.** Okay, and so then you had the trailer, so you had
10:48:17 the garage structure was converted to the apartment.
10:48:20 **A.** Um hum.
10:48:21 **Q.** And then your dad moved from the trailer into the
10:48:24 garage apartment?
10:48:25 **A.** Yes.
10:48:25 **Q.** And just for the sake of comparison, I'll say
10:48:29 trailer and I'll say garage apartment, does that --
10:48:31 **A.** Okay.
10:48:31 **Q.** -- help distinguish the two?
10:48:33 **A.** Yes.
10:48:34 **Q.** Now the trailer was actually set up on a concrete
10:48:37 pad, right?
10:48:38 **A.** Correct.
10:48:38 **Q.** And at one point that trailer you rented to Darcy
10:48:44 Russell and Tom Rathbun?
10:48:46 **A.** Yes.
10:48:47 **Q.** So it was the trailer itself that you had rented to
10:48:50 them?
10:48:50 **A.** Correct.
10:48:51 **Q.** And Ms. Peebles showed you Exhibit 84 and that's the
10:48:57 lease?
10:48:57 **A.** Yes.
10:48:57 **Q.** That you entered into with them? And that was -- if
10:49:08 you look at the second page please.

10:49:12 A. Yes.

10:49:14 Q. That was signed on December ninth of 1992, correct?

10:49:19 A. Correct.

10:49:19 Q. And they were going to move in in January of ninety-three?

10:49:22 A. About that, yes.

10:49:24 Q. And initially, again, if you look at the second page, under the special agreements under number three, it says they, the tenants, agree to stay or occupy the trailer on Rice Road at least until May first, right?

10:49:51 A. Yes, yes.

10:49:52 Q. And then if you flip to the front page, Mrs. Vecchio, at the top here (indicating), it talks in the agreement the tenants agree to pay the landlord on the first of each month and rent may be increased after twelve months from the date of lease.

10:50:19 A. Yes.

10:50:19 Q. And you managed the property when Darcy and Tom lived there?

10:50:30 A. Only until my father returned from Florida.

10:50:32 Q. And how often would you interact with Tom and Darcy?

10:50:36 A. A couple times a month maybe.

10:50:39 Q. Okay, to pick up -- would they bring the rent over your place or you go over and pick it up?

10:50:45 A. Either one.

10:50:46 **Q.** Would you ever go just to socialize with them, talk with them?

10:50:49 **A.** No.

10:50:49 **Q.** So a professional relationship?

10:50:52 **A.** Correct.

10:50:53 **Q.** Your son Darron, did he have a social relationship with Tom and Darcy though?

10:50:58 **A.** He did.

10:51:00 **Q.** Would he go over to their trailer and visit with them?

10:51:02 **A.** Yes.

10:51:03 **Q.** How often would that be?

10:51:04 **A.** A few times a week.

10:51:08 **Q.** Okay, and basically would he go over and see them throughout the time that they lived there as far as you know?

10:51:17 **A.** For a certain length of time he did. I didn't really watch what he did all the time. I couldn't tell you that.

10:51:26 **Q.** To your knowledge, were Darcy and Tom living in that trailer when they got married?

10:51:33 **A.** I don't remember that. I do not recall when they got married. I do know that when my father returned in ninety-three, he was very upset about the living conditions of the trailer, things that had happened to it, and he

10:51:46 wanted them to move out, and I -- from there my father
10:51:50 handled it.

10:51:51 **Q.** Okay, do you know if they in fact moved out that
10:51:57 year?

10:51:58 **A.** I don't know that for one-hundred percent sure, no.

10:52:02 **Q.** Could they have worked it out with your dad and kept
10:52:04 living there?

10:52:04 **A.** No, they could not have worked it out with my
10:52:07 father.

10:52:07 **Q.** Okay. Did you own any other properties on Rice
10:52:12 Road?

10:52:12 **A.** No.

10:52:13 **Q.** Did you ever rent any other properties to Darcy and
10:52:17 Tom?

10:52:17 **A.** No.

10:52:18 **Q.** Now, is it possible that Darcy and Tom had been
10:52:44 living there in April of 1994, still have been living there
10:52:49 through ninety-four?

10:52:51 **A.** They would have had to have signed another lease and
10:52:55 I don't see that happening. That's why like I said, I only
10:52:58 took care of the property in the wintertime when my father
10:53:00 was gone, and I know that he was very unhappy with them
10:53:04 being there.

10:53:05 **Q.** Well, Mrs. Vecchio, what I'm asking -- I guess what
10:53:08 I'm asking you is you and I had talked at a prior occasion

10:53:11 at your house, correct?

10:53:12 **A.** Yes, we did.

10:53:13 **Q.** Are you a hundred percent certain that Darcy and Tom
10:53:16 weren't living there in April of ninety-four?

10:53:18 **A.** No, I can't say that one-hundred percent sure, but I
10:53:21 have a pretty strong indication that they were not, but
10:53:25 this was twenty years ago.

10:53:26 **Q.** And in twenty years, your dates could be off some,
10:53:31 off by a year maybe?

10:53:33 **A.** They may be, but I -- I did try to do some research
10:53:37 on this, and I went back through some receipts, and I
10:53:40 realized that some of these receipts were dated in the
10:53:45 winter of ninety-three, spring of ninety-four, and that's
10:53:47 when I would have been down there or had people down there
10:53:50 working in the apartment.

10:53:53 **Q.** The garage apartment?

10:53:54 **A.** Yes, which led me to believe why I would have had
10:53:59 the altercation with Jennifer Wescott during that time.
10:54:02 Otherwise, I wouldn't have known that she was there, and I
10:54:05 wouldn't have seen her come in and out so much.

10:54:08 **Q.** But Mrs. Vecchio, when you and I spoke, you had a
10:54:13 number of receipts from Lowes and other hardware stores?

10:54:17 **A.** Correct.

10:54:17 **Q.** Basically going throughout the nineties?

10:54:19 **A.** Yes.

10:54:20 **Q.** And the apartment garage that your dad lived in, would it be fair to say it was renovated a number of times throughout the nineties?

10:54:27 **A.** Not the apartment itself.

10:54:29 **Q.** But the structure itself?

10:54:30 **A.** Yes. He added on to the back, he added on to the side.

10:54:34 **Q.** And again, if that would have been the mid-nineties, ninety-five, ninety-six, ninety-seven, would renovations have been made to that structure at some point during that time period?

10:54:44 **A.** They would have, but there was also receipts from ninety-two and ninety-three and ninety-four in there as well.

10:54:49 **Q.** And again, so your recollection of Jennifer Wescott's tied to repairs being made?

10:54:56 MS. PEEBLES: Excuse me. I didn't hear that.

10:54:58 THE COURT: I didn't hear the question.

10:54:59 **Q.** Okay, I'm sorry. Your recollection of Jennifer Wescott, it's tied to certain repairs being made on the property or some type of repair work going on at the property or renovations?

10:55:13 **A.** No. I'm saying that I was at the -- I spent a great deal of time at the apartment during the first renovations of the apartment. I spent a lot of time on the property,

10:55:24 and I knew who was living in the trailer, and I knew that
10:55:28 she was there and she shouldn't have been because my father
10:55:31 would have been very upset about her being there, so I had
10:55:33 the altercation with her sometime March, April, before he
10:55:37 came back. Am I one-hundred percent sure that it was in
10:55:41 ninety-four, no, but I'm pretty sure that it was.

10:55:45 **Q.** Okay, you dealt with Darcy and Tom to actually
10:56:00 execute the lease for your dad's trailer, right?

10:56:02 **A.** The first lease, yes, or whatever the one you've
10:56:05 already showed me, yes.

10:56:07 **Q.** Okay. Did you ever execute a lease for any
10:56:14 Wescotts?

10:56:14 **A.** No.

10:56:16 **Q.** You weren't personally involved with them?

10:56:19 **A.** I met her when she moved in, that was all.

10:56:22 **Q.** Met who?

10:56:23 **A.** Mrs. Wescott, or whatever her name was. Joyce,
10:56:26 actually Joyce Neat, the owner of the trailer, is the one
10:56:30 that rented the trailer to the Wescott's mother for a
10:56:33 period of time.

10:56:33 **Q.** Okay, and Joyce was your father's companion?

10:56:37 **A.** Correct.

10:56:38 **Q.** Okay, and you said you met a woman who moved in
10:56:43 around that time that you believed to be Jennifer Wescott's
10:56:46 mom.

10:56:46 **A.** Correct.

10:56:47 **Q.** Did she ever tell you her name?

10:56:49 **A.** No. I was introduced to her as Mrs. Wescott.

10:56:54 **Q.** Okay. By Mrs. Neat?

10:56:57 **A.** Yes.

10:56:58 **Q.** Did you know her first name?

10:57:00 **A.** I -- I did, but I don't remember what it was.

10:57:03 **Q.** And you met her just that one time?

10:57:10 **A.** I would pick up the rent once a month and send it to
10:57:13 Joyce.

10:57:16 **Q.** Well, how long -- how long did that woman live
10:57:20 there?

10:57:20 **A.** Three or four months, it was just for the winter.
10:57:23 Apparently there was some work being done to their house so
10:57:27 the trailer was offered for them to stay in.

10:57:30 **Q.** Okay, and so you were picking up a check from who
10:57:35 you believed to be Mrs. Wescott?

10:57:36 **A.** Yes.

10:57:36 **Q.** Sending it to your dad in Florida?

10:57:38 **A.** Correct.

10:57:38 **Q.** Now that would have been during the wintertime,
10:57:41 right?

10:57:41 **A.** Yes.

10:57:41 **Q.** When your dad's down in Florida?

10:57:43 **A.** Yes.

10:57:44 **Q.** And you said your dad got back in April?

10:57:45 **A.** April or May, it would vary.

10:57:48 **Q.** So it would be -- I guess what I'm trying to figure
10:57:52 out is if the Wescotts lived there during the winter, I'm
10:57:58 just trying to piece it together, you said Mrs. Russell,
10:58:02 Mr. Rathbun lived there essentially the winter of
10:58:05 ninety-three. January, February, March of ninety-three,
10:58:09 right?

10:58:10 **A.** Yes, because I rented to them in December, and they
10:58:13 would have moved out, if they moved out after my father got
10:58:17 back.

10:58:17 **Q.** So sometime in April-ish of ninety-three?

10:58:21 **A.** Yes.

10:58:23 **Q.** And you believe the Wescotts moved in during the
10:58:26 winter of ninety-four?

10:58:29 **A.** I believe the Wescotts -- to the best of my
10:58:33 recollection, I believe that Darcy and Tom moved out in the
10:58:39 late fall of ninety-three before my father went to Florida.

10:58:43 **Q.** So if they were there in late ninety-three in the
10:58:48 fall before your dad left, so your belief is that at least
10:58:54 as of the fall of ninety-three, Darcy and Tom were still
10:58:57 living there, so they weren't kicked out in May then, is
10:59:00 that fair?

10:59:00 **A.** I couldn't tell you that. Again, I did not handle
10:59:03 it in the summertime.

10:59:04 **Q.** Okay, but Mrs. Vecchio, I guess I'm just trying to piece together is so you think Tom and Darcy were still living there in the fall of ninety-three?

10:59:13 **A.** I believe.

10:59:14 MS. PEEBLES: Judge, she's asked and answered the same question.

10:59:16 THE COURT: I'll sustain the objection.

10:59:18 MR. OAKES: Okay.

10:59:26 **Q.** Mrs. Vecchio, do you know the exact length of time that Tom and Darcy lived there?

10:59:32 **A.** No, I don't.

10:59:33 **Q.** Okay. Do you know exactly when the woman you believe to be Wescott moved into that residence?

10:59:45 **A.** No, I don't.

10:59:46 **Q.** And again, you said you believed it to be Jen's mom that was living there?

10:59:53 MS. PEEBLES: Judge, again, asked and answered.

10:59:56 THE COURT: Sustained. I sustained.

11:00:00 MS. PEEBLES: What are we doing?

11:00:01 THE COURT: Sustained your objection.

11:00:02 **Q.** Was there anybody else, did she have a husband or partner, somebody live there with her?

11:00:06 **A.** I thought it was a husband. I'm not -- I'm not sure. I do know that he had -- I used to see them in

11:00:13 passing, and he had a wheelchair, a walker, something to
11:00:18 that effect, and he -- it was hard for him to get around.

11:00:24 **Q.** Did they have any other children living with them?

11:00:28 **A.** No. But I used to hear a baby crying.

11:00:34 **Q.** Okay, and do you know whose baby that was?

11:00:37 **A.** I do not, no.

11:00:39 **Q.** And do you know for certain the relationship between
11:00:51 Jen Wescott and the woman who was living there? Had you
11:00:53 ever been introduced to them as mother and daughter?

11:00:55 **A.** No.

11:00:56 **Q.** Was that an assumption you made?

11:00:57 **A.** That was an assumption I had made, yes, sir.
11:01:00 However, I did say to her, "You can't stay with your
11:01:03 mother," and she didn't deny that was her mother.

11:01:07 **Q.** The woman that you believe to be Jen Wescott, did
11:01:10 she have a baby at the time?

11:01:11 **A.** No. I've never -- I never saw her with a child, no.

11:01:15 **Q.** And when did you -- at what point did you tell
11:01:21 Jennifer she couldn't stay there?

11:01:22 **A.** It was early spring, it was just a month or so
11:01:26 before my father would have been back, March or April,
11:01:31 still snow on the ground.

11:01:32 **Q.** Of what year?

11:01:33 **A.** Pardon me?

11:01:34 **Q.** Of what year?

11:01:35 **A.** I couldn't tell you that. I -- if Darcy and Tom
11:01:38 moved out the end of ninety-two, then it would have been
11:01:41 the spring of ninety-three. I'm sorry, ninety-four,
11:01:45 ninety-four.

11:01:46 **Q.** And the people you were renting the trailer to, did
11:01:51 you give them access or use to the garage at that time?

11:01:54 **A.** No, no.

11:01:57 **Q.** Were there doors on the garage at that time?

11:02:01 **A.** There was -- yes, there was one door on the garage.
11:02:04 Well, there was doors on both of the garage, but one side
11:02:07 was being turned into an apartment.

11:02:10 **Q.** And the door, I mean was it a traditional garage
11:02:13 door?

11:02:14 **A.** Yes.

11:02:15 **Q.** Do you know did it have an electronic opener?

11:02:18 **A.** No.

11:02:18 **Q.** Was it locked or kept locked?

11:02:20 **A.** It was left -- it was open, it was never locked.

11:02:23 **Q.** And were the tenants allowed to have access to that?

11:02:33 **A.** I believe Tom Rathbun used it when he was there.

11:02:36 **Q.** But the woman you believe was Wescott, they didn't
11:02:41 use it?

11:02:41 **A.** I'm sure Joyce probably gave her permission to use
11:02:44 the garage. I never saw a vehicle in there, but again, I
11:02:46 never really paid it much attention.

11:02:48 **Q.** Okay, and you have described Jennifer Wescott as having a friend that you believe to be Mr. Breckenridge?

11:02:55 **A.** Yes.

11:02:55 **Q.** You said he would come by the place occasionally?

11:02:58 **A.** Yes.

11:02:59 **Q.** He wasn't living there though was he?

11:03:01 **A.** That I couldn't tell you. She wasn't living there, she was just staying there occasionally.

11:03:06 **Q.** And when you say staying there, is this like a day or two, a couple days?

11:03:10 **A.** Well, as I said, I was down there a lot doing some work, overseeing some work done in the apartment, and I saw her very frequently in and out, her and her friend.

11:03:21 **Q.** Okay, but you believed her mom was living there?

11:03:24 **A.** I did, yes.

11:03:25 **Q.** I'm not trying to be cute, your sons come and visit you?

11:03:30 **A.** Pardon me?

11:03:30 **Q.** Your sons?

11:03:30 **A.** Yes.

11:03:30 **Q.** Come and visit you?

11:03:31 **A.** Yes.

11:03:32 **Q.** It's not abnormal for kids to come visit their parents?

11:03:38 **A.** Correct.

11:03:38 **Q.** Visit frequently sometimes?

11:03:39 **A.** Correct.

11:03:39 **Q.** Doesn't mean they're living there, is that fair to
11:03:42 say?

11:03:43 **A.** That's correct, but I did see her there quite late
11:03:46 at night.

11:03:47 MS. PEEBLES: Judge --

11:03:47 THE COURT: Where are you going with this?

11:03:49 MR. OAKES: Well, I mean part of the defense's
11:03:51 argument is that Jennifer Wescott and Roger
11:03:54 Breckenridge were living at this residence during the
11:03:56 time period --

11:03:56 MS. PEEBLES: That is a mischaracterization of
11:03:58 our position. We've never even said that.

11:04:00 MR. OAKES: I think they have been trying to
11:04:02 establish that they have been living at that residence
11:04:04 and I'm just trying to refute the defense argument
11:04:06 that --

11:04:07 MS. PEEBLES: This is our witness we called,
11:04:08 and we stand by her testimony, what she's saying here
11:04:11 today.

11:04:11 THE COURT: He has a right to cross-examine
11:04:13 and challenge that testimony.

11:04:15 MS. PEEBLES: Which is fine, but he's making
11:04:17 statements that that is our position and it is

11:04:18 absolutely not our position.

11:04:19 THE COURT: In your motion papers it seemed to be your position that she was living at the house.

11:04:25 MS. PEEBLES: Staying at the house.

11:04:28 THE COURT: I think it's splitting hairs frankly. Move on.

11:04:48 MR. OAKES: Okay, that's fine.

11:04:48 **Q.** Darron was born in seventy-seven?

11:04:50 **A.** Correct.

11:04:51 **Q.** Okay, and you said he built the fort when he was in middle school years like thirteen, fourteen, fifteen?

11:04:59 **A.** It was a camp, yes.

11:05:02 **Q.** Okay, camp. So that would have been like ninety to ninety-two-ish ballpark?

11:05:06 **A.** Yes. Took him a few years to build it.

11:05:09 **Q.** Okay, and after he had it built, I mean through the middle school years up to fourteen, fifteen, he would go back to the camp?

11:05:17 **A.** Yes.

11:05:18 **Q.** So again, he would have been fifteen in ninety-two?

11:05:22 **A.** Correct.

11:05:23 **Q.** And when he was fifteen, sometime when he was fifteen, he started dating a girl over in Altmar, right?

11:05:32 **A.** Correct.

11:05:34 MS. PEEBLES: Objection. Relevance, Judge.

11:05:35 THE COURT: Hold on. First off, dated who?

11:05:38 MR. OAKES: Darron started dating a girl from
11:05:42 over in Altmar, A-L-T-M-A-R.

11:05:45 THE COURT: Relevance.

11:05:46 MR. OAKES: If I can have a little leniency,
11:05:49 Your Honor, I'm just trying to show the time period
11:05:51 that Darron was actually using the camp, what is being
11:05:55 maintained.

11:05:56 THE COURT: I'll allow it.

11:05:56 **Q.** And that girlfriend when he was fifteen ultimately
11:06:00 became his wife when he got older?

11:06:02 **A.** Correct.

11:06:02 **Q.** What was her name again?

11:06:03 **A.** Sarah.

11:06:04 **Q.** Sarah. So at the time he was dating Sarah, he'd go
11:06:08 over to Altmar and see her?

11:06:09 **A.** Yes.

11:06:10 **Q.** Actually Darron?

11:06:11 **A.** Yes.

11:06:12 **Q.** I'm sorry, David would drive him over sometimes?

11:06:13 **A.** Yes.

11:06:14 **Q.** And after he started seeing Sarah, was he still
11:06:16 using the camp?

11:06:17 **A.** No.

11:06:18 **Q.** The fort?

11:06:19 **A.** But other people were.

11:06:20 **Q.** Okay, and you've described the camp that he had, again, it had walls, a roof?

11:06:32 **A.** Yes.

11:06:32 **Q.** Some flooring?

11:06:33 **A.** Yes.

11:06:34 **Q.** You described the carpet, the flooring. Was it actually kind of pallet that he had laid down?

11:06:41 **A.** Parts of it was cement and part of it was pallet, yes.

11:06:45 **Q.** So there wasn't floorboards in the traditional way we would think of in a house or cabin?

11:06:51 **A.** No, no.

11:06:52 **Q.** And you talked about it having a fire pit?

11:06:55 **A.** Yes.

11:06:55 **Q.** That wasn't inside of it.

11:06:57 **A.** No, no.

11:06:58 **Q.** And was it basically fifteen to twenty feet outside of the structure?

11:07:04 **A.** I couldn't tell you that. I don't know.

11:07:07 **Q.** It would -- did you ever see the fire pit?

11:07:09 **A.** Yes, yes.

11:07:10 **Q.** Was it like a dug-in pit or is it just a place where they built fires?

11:07:14 **A.** I believe he actually built -- built it like with

11:07:18 cement bricks if I remember correctly.

11:07:20 **Q.** Okay, you're not sure though?

11:07:22 **A.** I'm not sure, no.

11:07:23 **Q.** Was there ever a fireplace inside of the cabin?

11:07:25 **A.** No, not to my knowledge.

11:07:27 **Q.** Now you said at that time there was kind of an
11:07:37 entryway right from Rice Road kind of cut in the grass
11:07:40 where you could walk up to the camp?

11:07:42 **A.** There was a path back there, yes.

11:07:43 **Q.** Okay.

11:07:46 **A.** The camp is quite deep into the woods, yes.

11:07:49 **Q.** Did you have to cross railroad tracks to get to the
11:07:54 camp?

11:07:54 **A.** No.

11:07:55 **Q.** And it was located right in the woods, not in a
11:07:58 field someplace, right?

11:07:59 **A.** No, it was in the woods.

(People's Exhibit FFF was marked for identification).

(People's Exhibit GGG was marked for identification).

(People's Exhibit HHH was marked for identification).

11:10:36 MR. OAKES: (Showing to Ms. Peebles).

11:10:43 **Q.** Mrs. Vecchio, the property where your dad is living

11:10:47 now, you said you believe that's 46 Rice Road?

11:10:50 **A.** I -- I don't know if it's 46 or 48, we're 44, but
11:10:56 they kind of -- I'm not really sure what it is.

11:10:59 **Q.** Could it be sixty-eight?

11:11:01 **A.** It could be sixty-eight, yes.

11:11:03 **Q.** Let me ask you, were the houses on that road always
11:11:07 numbered in that way?

11:11:08 **A.** No.

11:11:08 **Q.** Did the number system change at some point?

11:11:12 **A.** Yes. I couldn't tell you when, but they have
11:11:14 changed.

11:11:14 **Q.** Would that have been sometime after Darcy Purdy
11:11:17 lived there, the number system changed?

11:11:20 **A.** It could have been, yes.

11:11:21 **Q.** I just want to make sure we're talking about the
11:11:23 same structure.

11:11:24 **A.** Yes, I'm sure we are.

11:11:25 MR. OAKES: Can I approach, Your Honor?

11:11:26 THE COURT: Sure.

11:11:28 **Q.** And I'm going to hand you what's been marked as FFF,
11:11:34 GGG and HHH as exhibits. Can you just look at those, Mrs.
11:11:38 Vecchio?

11:11:39 **A.** Yes.

11:11:39 **Q.** Okay, and are those pictures fair and accurate
11:11:44 photographs to show the condition of the structure where

11:11:47 your dad lives now?

11:11:48 **A.** Yes.

11:11:49 **Q.** And that's the structure we have been talking about?

11:11:51 **A.** It is.

11:11:52 MR. OAKES: I'd like to offer these exhibits,
11:11:55 Your Honor.

11:11:59 THE COURT: Have you seen the exhibits?

11:12:00 MS. PEEBLES: I just saw them. I'm not sure
11:12:03 of the relevance but I have no objection.

11:12:04 THE COURT: Okay, they're in without
11:12:08 objection.

(People's Exhibit FFF was received in evidence).

(People's Exhibit GGG was received in evidence).

(People's Exhibit HHH was received in
11:12:08 evidence).

11:12:08 **Q.** Okay, and Mrs. Vecchio, looking at HHH, exhibit
11:12:15 here, again, the structure we see, that's what we have been
11:12:19 referring to as basically the garage apartment?

11:12:20 **A.** Yes.

11:12:21 **Q.** Did it look like this back in ninety-four?

11:12:29 **A.** I believe the overhang off the garage was added on.
11:12:35 It didn't look like that in ninety-four, no.

11:12:37 **Q.** Okay, fair to say it was smaller?

11:12:39 **A.** Yes.

11:12:40 **Q.** Back in ninety-four?

11:12:41 **A.** It was smaller, yes.

11:12:43 **Q.** And as you look at this again, the garage apartment now, there appears to be a set of trees to the right of it, or bushes, trees?

11:12:50 **A.** Yes.

11:12:51 **Q.** Is that where the trailer would have been located?

11:12:53 **A.** It was, yes.

11:12:54 **Q.** Okay. And that garage, again, the garage apartment we're looking at, that's where your dad stayed when he came back from Florida?

11:13:14 **A.** Yes.

11:13:14 **Q.** In 1994, do you recall when your dad came back from Florida?

11:13:20 **A.** No. It would have been early spring. It would have been April or May of ninety-four.

11:13:37 **Q.** Again, in the photographs I just showed you, there is quite a bit of snow there, right?

11:13:47 **A.** Yes.

11:13:48 **Q.** In Parish where you lived, or actually where you live, it's in the Town of Mexico, right?

11:13:53 **A.** Yes.

11:13:54 **Q.** Fair to say you get a good bit of snow every year?

11:13:56 **A.** Yes.

11:13:57 **Q.** After ninety-two, when Darron started dating Sarah,
11:14:02 did he ever go back in the woods to shovel off the cabin?

11:14:05 **A.** No. However, there were other people for a certain
11:14:09 length of time that were using that camp. Other kids.

11:14:12 **Q.** During the winter months or during --

11:14:13 **A.** They were there a lot until Mr. Scorzeli put a stop
11:14:19 to it.

11:14:19 **Q.** Okay, and would that have included back in
11:14:21 ninety-four?

11:14:22 **A.** That would have included any time after Darron
11:14:24 stopped using it.

11:14:25 **Q.** Okay.

11:14:39 MR. OAKES: One moment please, Your Honor.

11:14:42 (Whereupon, there was a pause in the
proceeding.)

11:14:53 **Q.** And Mrs. Vecchio, you talked about the fort or the
11:14:59 structure that Darron built was deep in the woods. Did it
11:15:04 have a little creek or stream right near it?

11:15:06 **A.** It did. He had built a bridge over it.

11:15:08 **Q.** And it was located pretty close to that stream?

11:15:11 **A.** The camp, yes.

11:15:13 **Q.** Relatively?

11:15:14 **A.** Yes.

11:15:15 **Q.** The camp was built relatively close to the stream?

11:15:20 **A.** Yes.

11:15:21 MR. OAKES: At this point I have no further
11:15:23 questions, Your Honor.

11:15:24 THE COURT: Ms. Peebles?

11:15:25 MS. PEEBLES: Just a brief couple questions.

11:15:27 THE COURT: Sure.

11:15:28 REDIRECT EXAMINATION

11:15:28 BY MS. PEEBLES:

11:15:29 **Q.** Ms. Vecchio, Mr. Oakes was asking you some questions
11:15:32 about your son. Do you recall renting the back apartment
11:15:35 to any of your son's friends?

11:15:40 MR. OAKES: Objection. Beyond the scope, Your
11:15:42 Honor.

11:15:42 THE COURT: Yes. You mention something
11:15:46 related to the camp and friends of the son, it's beyond
11:15:49 the scope. You don't need to answer that.

11:15:51 MS. PEEBLES: Well, I think it would help to
11:15:52 put it into context, the time frame that Mr. Oakes kept
11:15:55 harping on.

11:15:56 THE COURT: It's beyond the scope. There's no
11:15:58 mention of renting the camp or renting the apartment to
11:16:00 friends of a son. Only son we know is David by name.
11:16:04 Darron?

11:16:04 THE WITNESS: Darron's my son.

11:16:06 THE COURT: Darron built it.

11:16:08 MS. PEEBLES: Not the camp.

11:16:08 THE COURT: I understand that. That's why
11:16:09 it's beyond the scope.

11:16:10 MS. PEEBLES: No. He was asking about whether
11:16:12 she was friends with Darcy and her husband at the
11:16:15 trailer. I think it's relevant, Judge, because he's
11:16:17 been trying to confuse her about her memory.

11:16:19 THE COURT: It's beyond the scope. How's this
11:16:22 within the scope of the cross-examination?

11:16:24 MS. PEEBLES: Because he asked whether or not
11:16:25 he would socialize with Darcy, and that's not the only
11:16:28 person that he would socialize with in terms of who she
11:16:31 was renting to during that time period.

11:16:36 THE COURT: I'll allow it, very limited
11:16:38 though.

11:16:40 **Q.** Do you remember, Ms. Vecchio?

11:16:41 **A.** Yes, I did.

11:16:42 **Q.** Who was it?

11:16:43 **A.** Brian Mensch and a friend Mike. I'm not sure of his
11:16:49 last name.

11:16:49 **Q.** Do you recall when you rented to them?

11:16:51 **A.** Not exactly.

11:16:53 **Q.** Would that have been during the time when Darcy and
11:16:57 Mr. Rathbun were living there, Rathbun?

11:16:59 **A.** I don't believe so because they were about the same
11:17:03 age and they would have interacted with each other.

11:17:05 **Q.** Thank you. Now in connection with the person that
11:17:09 was disabled that you described.

11:17:10 **A.** Yes.

11:17:11 **Q.** Did there come a time when you learned who that
11:17:14 person was?

11:17:14 **A.** I thought it was her husband. I was under the
11:17:16 assumption that it was her husband, but I was later told it
11:17:20 was an uncle.

11:17:21 MR. OAKES: Objection, Your Honor, as to
11:17:23 hearsay.

11:17:23 **Q.** Who told you that?

11:17:24 THE COURT: Let's find out who told her.

11:17:26 **Q.** Who told you?

11:17:27 **A.** Mr. Oakes.

11:17:27 **Q.** So he told you it was an uncle.

11:17:29 **A.** That it was an uncle, that the father, husband, was
11:17:33 not ailing, but there was definitely an ailing person
11:17:38 living there.

11:17:39 MS. PEEBLES: No further questions.

11:17:40 THE COURT: Mr. Oakes, anything?

11:17:41 MR. OAKES: No thank you, Your Honor.

11:17:42 THE COURT: You're all set. Thank you.

11:17:44 THE WITNESS: Thanks.

11:17:47 MS. BIANCO: Your Honor, at this time I'd like
11:17:48 to recall Jessica Howard. On the trip back, my

11:17:52 investigator was driving Ms. Howard home and she -- he
11:17:57 learned that Ms. Howard gave some other information to
11:17:59 the police last night which is very, very relevant to
11:18:02 this case, and we obviously didn't receive that in this
11:18:06 report dated February fifth which we got this morning,
11:18:10 so what she was telling the police last night is
11:18:14 certainly relevant and I'd like to recall her for that.

11:18:18 MR. OAKES: Actually I'm going to object, Your
11:18:21 Honor. I presume that counsel met with Ms. Howard
11:18:24 prior to putting her on the stand.

11:18:25 MS. BIANCO: I did not this morning.

11:18:27 THE COURT: Let him finish, Ms. Bianco.

11:18:30 MR. OAKES: It's my understanding that
11:18:32 counsel, or investigator for her office, met with her
11:18:36 prior to the hearing commencing back in January. I
11:18:37 presumed they met with her closer in time to today.
11:18:40 They had every opportunity to talk with her to find out
11:18:43 whatever it is she has to tell. Again, if she's
11:18:46 telling a different story last night from what she told
11:18:48 them before, I can't help that. It's their witness,
11:18:52 they've had ample time to prepare. If they didn't
11:18:54 elicit that information from her, shame on them.

11:18:56 MS. BIANCO: Well, Your Honor, it's my
11:18:58 understanding --

11:18:58 THE COURT: Hold on. Hold on. Mr. Oakes,

11:19:00 watch the language, okay? It's not going to be an
11:19:03 issue to embarrass her.
11:19:07 MR. OAKES: Yes, Your Honor, sorry.
11:19:08 THE COURT: Did you have an opportunity to
11:19:09 speak with her this morning?
11:19:09 MS. BIANCO: I did not before I received this
11:19:11 report, no.
11:19:11 THE COURT: Did you have an opportunity to
11:19:12 speak to her after?
11:19:13 MS. BIANCO: After the report? No, I did not.
11:19:16 She just went up on the stand. No, Your Honor, I did
11:19:18 not talk to her before I received this.
11:19:22 THE COURT: Was this statement elicited from
11:19:25 questioning?
11:19:26 MS. BIANCO: A statement was not elicited --
11:19:28 THE COURT: My question is was the
11:19:30 investigator in the courtroom during her testimony.
11:19:32 MS. BIANCO: My investigator in the courtroom
11:19:34 during her testimony?
11:19:34 THE COURT: Her testimony.
11:19:35 MS. BIANCO: Yes, but this is what she
11:19:37 elicited to the police last night and this is --
11:19:40 THE COURT: That's what she said, she elicited
11:19:42 to the police?
11:19:43 MS. BIANCO: Excuse me, that she told the

11:19:45 police last night, they pooh poohed it. Essentially
11:19:47 there was a picture that she showed the police last
11:19:50 night which contains James Steen, Roger Breckenridge
11:19:55 and Heidi Allen together. She showed them the picture
11:19:58 last night. She identified the participants, they
11:20:02 weren't interested in putting it in the statement, and
11:20:04 I believe that it's very relevant to put the parties
11:20:07 together.

11:20:08 THE COURT: Mr. Oakes?

11:20:08 MR. OAKES: I don't know. Can I see the
11:20:13 photograph?

11:20:13 MS. BIANCO: It was taken off her phone. We
11:20:15 printed it out now.

11:20:22 THE COURT: Who did she speak to last night?

11:20:25 MR. OAKES: She spoke with Investigator Bucher
11:20:28 and Investigator Bray last night, Your Honor, and --

11:20:33 THE COURT: Bucher and Bray?

11:20:35 MR. OAKES: Bray, yes, Your Honor.

11:20:36 MS. BIANCO: And they gave us a CD this
11:20:38 morning. Obviously, Your Honor, I haven't had a chance
11:20:40 to review the CD of Ms. Howard because we got it this
11:20:46 morning. I don't know if there's information on the CD
11:20:48 or not. I only reviewed this report, there was no
11:20:51 mention of that picture in this report or in the cover
11:20:56 letter.

11:20:58 THE COURT: Mr. Oakes, do you know if the picture was shown to investigators?

11:21:02 MR. OAKES: It was, Your Honor. In fact, the investigator did mention to me that she had a photograph that she claimed these three people were in, but he said, "I looked at it, I don't know who it is."

11:21:13 MS. BIANCO: Again, Your Honor, this would have been Brady material. It's not specified in the letter, and this is yet another thing that's not being disclosed to us, and it's right from last night.

11:21:30 THE COURT: Mr. Oakes, isn't it a determination of whether something is Brady or not actually the defense determination, not the People? Were you aware of this photograph?

11:21:39 MR. OAKES: Your Honor, I was aware -- I had not seen the photograph. I was aware that she had shown them a photograph, and again, my understanding is there was a photograph that again, I don't know if it's this photograph, I'd been hearing rumors that there was a photograph purportedly shown them, it was online on a website, we went to it before, couldn't find it. Again, if Ms. Howard has information regarding this, fine. They can recall her, Your Honor.

11:22:11 THE COURT: Call her back. Is she here?

11:22:13 MS. BIANCO: She's here.

11:22:17 THE COURT OFFICER: Ms. Howard?

11:22:18 THE COURT: Sure.

11:22:29 MS. BIANCO: Could we have this marked as
11:22:30 Exhibit 145?

11:22:31 (Defendant's Exhibit 145 was marked for
11:23:04 identification).

11:23:05 MS. BIANCO: Good afternoon, Ms. Howard.

11:23:06 THE COURT: Let me see it first please.

11:23:12 MS. BIANCO: I'm sorry, Your Honor.
11:23:14 (Handing).

JESSICA HOWARD, having been recalled to the stand, testified further as follows:

DIRECT EXAMINATION

11:23:24 BY MS. BIANCO:

11:23:24 **Q.** Ms. Howard, last night you met with the members of
11:23:28 the Oswego County Sheriff's Department, is that right?

11:23:30 **A.** Yes.

11:23:31 **Q.** And did you have an occasion to show them a picture
11:23:35 you had on your phone?

11:23:36 **A.** Yes.

11:23:37 **Q.** And I'm going to show you what's been marked
11:23:40 Defendant's Exhibit 145. Is that a black and white
11:23:45 depiction of the same picture that you had on your phone?

11:23:49 **A.** Yes.

11:23:49 **Q.** And who is it a picture of?

11:23:52 **A.** Steen, Roger and Heidi.

11:23:56 **Q.** Okay, could you mark with a pen, I'm going to try
11:24:03 and get three different colors at this point, could you
11:24:13 mark with a green pen where Mr. Steen is located, just put
11:24:18 an arrow by him.

A. (Indicating).

11:24:19 **Q.** And are you certain that's Mr. Steen?

11:24:27 **A.** Yes.

11:24:27 **Q.** Do you know Mr. Steen?

11:24:28 **A.** Yes.

11:24:30 **Q.** Okay, could you mark with a red pen where Mr. Roger
11:24:34 Breckenridge is located?

11:24:38 **A.** (Indicating).

11:24:39 **Q.** Are you certain that's Mr. Roger Breckenridge?

11:24:41 **A.** Yes.

11:24:41 **Q.** And could you mark with a blue pen where Heidi Allen
11:24:46 was located?

11:24:48 **A.** (Indicating).

11:24:49 **Q.** Are you certain that's Heidi Allen?

11:24:51 **A.** Yes.

11:24:52 **Q.** And did you show this to the police last night?

11:24:54 **A.** Yes, I did.

11:24:54 **Q.** Did they ask you to give a sworn statement about
11:24:56 this?

11:24:57 **A.** No.

11:24:57 **Q.** What did they tell you about what you said?

11:25:00 MR. OAKES: Objection, Your Honor.

11:25:01 THE COURT: Hold on. Don't answer the
11:25:02 question. What's your basis of objection?

11:25:04 MR. OAKES: Relevance, Your Honor.

11:25:06 MS. BIANCO: Well, Your Honor, this is about
11:25:08 Brady violation and the fact that they're not taking a
11:25:10 statement from her and not interested. I think that's
11:25:12 relevant.

11:25:12 THE COURT: Well, it may be relevant, but how
11:25:16 do you get by the hearsay of what police officer said
11:25:19 to her?

11:25:19 MS. BIANCO: I believe the police officers,
11:25:20 some of which may be coming in to testify, rather than
11:25:22 recall her again, we can get what they told her, and
11:25:24 it's not offered for the truth of the matter asserted
11:25:27 about what the police officer said to her, it's about
11:25:29 their interest, what they wanted to know.

11:25:31 THE COURT: The interest was they didn't take
11:25:33 a statement, right? I'm going to sustain the objection
11:25:35 on hearsay.

11:25:36 **Q.** Did they ask you for a copy of the picture on your
11:25:39 phone?

11:25:39 **A.** No.

11:25:42 MS. BIANCO: No further questions. I'd offer

11:25:44 Exhibit 145 into evidence please.

11:25:49 MR. OAKES: Can I voir dire, Your Honor?

11:25:50 THE COURT: Sure.

VOIR DIRE EXAMINATION

11:25:59 BY MR. OAKES:

11:26:06 **Q.** Ms. Howard, did you take this photograph?

11:26:09 **A.** No.

11:26:09 **Q.** Where did you obtain this photograph from?

11:26:11 **A.** Found it on Facebook, but it was only on there for a
11:26:15 short time.

11:26:16 **Q.** You found it on Facebook. On whose Facebook page?

11:26:19 **A.** It was on the community page. It was only a short
11:26:28 time.

11:26:30 **Q.** You said it was on a community page?

11:26:32 **A.** Like everybody can read it.

11:26:34 **Q.** Okay, from what type of -- I guess I'm not following
11:26:38 you. Was it listed for a person or an organization?

11:26:42 **A.** I don't know.

11:26:44 **Q.** You don't know?

11:26:46 **A.** I just found it.

11:26:47 **Q.** Okay.

11:26:48 THE COURT: When did you find it?

11:26:50 THE WITNESS: When? Two weeks ago maybe.

11:26:56 **Q.** Okay, and have you spoken to Ms. Bianco or Ms.
11:27:01 Peebles or their investigator since you found this?

11:27:04 **A.** No.

11:27:05 **Q.** You haven't? And do you know who took this photograph?

11:27:11 **A.** No.

11:27:11 **Q.** Do you know where it was taken?

11:27:13 **A.** No.

11:27:14 **Q.** Do you know when it was taken?

11:27:15 **A.** No.

11:27:16 **Q.** You don't know the year?

11:27:17 **A.** No.

11:27:18 **Q.** Have you ever met James Steen?

11:27:25 MS. BIANCO: Objection. This is beyond voir dire at this point.

11:27:27 THE COURT: No, it's not. You -- she's allegedly positively identified Mr. Steen. It's well within.

11:27:35 **Q.** When did you first meet Mr. Steen?

11:27:39 **A.** At a party maybe?

11:27:44 **Q.** What year?

11:27:45 **A.** I don't know.

11:27:45 **Q.** Would it have been since two-thousand?

11:27:47 **A.** Yeah.

11:27:48 **Q.** Do you know what he looked like back in 1993 or ninety-four?

11:27:52 MS. PEEBLES: I'm still having a hard time

11:27:54 hearing Mr. Oakes.

11:27:55 THE COURT: I don't think you turned your --

11:27:56 MR. OAKES: Sorry, I apologize.

11:27:57 **Q.** Did you know -- did you know Mr. Steen back in 1993
11:28:01 or ninety-four?

11:28:01 **A.** No. But I know that's him.

11:28:06 **Q.** Okay, well, Mr. Breckenridge, you've met Roger
11:28:09 Breckenridge, you met him after you started dating your
11:28:13 husband Andrew, right?

11:28:14 **A.** Right.

11:28:14 **Q.** That was in 2003 you started dating --

11:28:18 **A.** Two oh-four.

11:28:19 **Q.** Two oh-four.

11:28:22 **A.** Well, three.

11:28:23 **Q.** Had you ever met Roger Breckenridge before 2004?

11:28:27 **A.** Okay, we started dating in two oh-three, but I
11:28:31 married him in 2004.

11:28:32 **Q.** Okay, so prior to 2003 though, you didn't know Roger
11:28:36 Breckenridge.

11:28:37 **A.** No, but I know that I seen baby pictures of him and
11:28:41 pictures.

11:28:42 **Q.** Do you know what he looked like back in ninety-three
11:28:44 or ninety-four?

11:28:45 **A.** Um hum (indicating).

11:28:48 **Q.** Did you know him -- you didn't know him back in

11:28:50 ninety-three, ninety-four?

11:28:51 **A.** No.

11:28:52 **Q.** And again, the person you identified here as Heidi
11:28:56 Allen?

11:28:56 **A.** Yes.

11:28:57 **Q.** How do you know that's Heidi Allen?

11:29:00 **A.** Because I know.

11:29:03 **Q.** And when -- when did you realize it was Heidi Allen
11:29:11 in this photograph?

11:29:12 **A.** When the person that posted it said it was Heidi.

11:29:17 **Q.** Okay, so you know it's Heidi because the person who
11:29:20 posted it said it's Heidi.

11:29:22 **A.** Yep.

11:29:22 **Q.** You don't independently know?

11:29:24 **A.** I know it's Heidi.

11:29:27 **Q.** Well, how -- how do you know it's Heidi? Again, I
11:29:42 guess that's what I'm trying to figure out.

11:29:44 **A.** Because I do. I just know it's Heidi.

11:29:48 **Q.** Do you know if this picture was found on a digital
11:30:02 format? You found it online, right?

11:30:04 **A.** Yeah.

11:30:05 **Q.** Do you know if it's been altered or modified in any
11:30:08 way before being put on line?

11:30:09 **A.** No.

11:30:09 **Q.** 'Cause you know people can crop photos and --

11:30:12 MS. BIANCO: Objection to what he's giving her knowledge of.

11:30:14 THE COURT: That's a legitimate question.

11:30:17 **Q.** You realize --

11:30:19 MR. OAKES: I'm sorry, Your Honor.

11:30:19 **A.** Yeah, I know people could Photoshop.

11:30:21 **Q.** You have no idea whether this photograph has been Photoshopped?

11:30:25 **A.** You can tell it's not Photoshopped.

11:30:27 **Q.** Do you have training in Photoshop?

11:30:30 **A.** No.

11:30:30 **Q.** Do you have training in graphic images?

11:30:33 **A.** No, but it's not.

11:30:36 **Q.** Okay, that's your belief.

11:30:37 **A.** Right.

11:30:38 **Q.** Can you tell us whether this photograph's a fair and accurate picture of what these people looked like on the time this picture was taken?

11:30:49 **A.** Yes.

11:30:50 **Q.** Well, do you have any personal knowledge as to when this photograph was taken?

11:30:53 **A.** No.

11:30:53 **Q.** Or where it was taken?

11:30:55 **A.** No.

11:30:56 **Q.** Again, your knowledge is you found this image online

11:30:59 and you believe it -- you believe it to be those three
11:31:03 people?

11:31:03 **A.** Yes.

11:31:06 MR. OAKES: Your Honor, the People are going
11:31:10 to object to the admission of the photograph. I don't
11:31:12 believe this witness has an adequate knowledge to
11:31:14 testify that the authenticity of this photograph and
11:31:18 that it contains those people.

11:31:20 THE COURT: Ms. Bianco, how do you get by the
11:31:22 authenticity issue?

11:31:23 MS. BIANCO: Your Honor, that goes to weight,
11:31:25 not admissibility. She has identified the people in
11:31:28 the photograph. She tried to relay this to the police
11:31:30 last night who were not interested. There's no reason
11:31:33 to believe that that is Photoshopped. She's merely
11:31:36 identifying the persons in the photograph together, not
11:31:40 at a certain time.

11:31:41 THE COURT: How can she testify that it's a
11:31:43 fair and accurate depiction of Mr. Steen and Mr.
11:31:45 Breckenridge when she did not know them before 2014?

11:31:49 MS. BIANCO: Well, she stated she's seen
11:31:50 pictures of Mr. Breckenridge growing up as a baby and
11:31:54 she recognized him. The fact that she didn't know Mr.
11:31:58 Steen, she's not saying when that picture took place,
11:32:00 but she's saying --

11:32:01 THE COURT: That's the problem.

11:32:02 MS. BIANCO: -- she recognized Mr. Steen.

11:32:03 THE COURT: There is some authenticity requirement to put forward. I realize she didn't take the photo, but she has to say it's a fair and accurate depiction of those people at that time based on some knowledge of those people at that time.

11:32:14 MS. BIANCO: She's not arguing at what time, she's saying those people are in the picture. Whether that's the picture before ninety-four, 1990, 1991, I don't know, but she's identifying the persons in the picture. It's our position it goes to weight not admissibility.

11:32:30 THE COURT: Mr. Oakes?

11:32:32 MR. OAKES: I made my argument. I trust in your judgment, Your Honor.

11:32:38 THE COURT: Court's going to reserve. Court will have an answer at one o'clock this afternoon.

11:32:43 MR. OAKES: Your Honor, would you like me to give to you --

11:32:46 THE WITNESS: Am I done?

11:32:47 THE COURT: I don't know. Anything else? Who are you? Who are you?

11:32:52 MS. BIANCO: I'm sorry, Your Honor, he was asking me a question, not trying to give me

11:32:57 information.

11:32:57 THE COURT: This is not participatory. I know
11:33:00 this is emotional. I don't want to see this again or
11:33:03 those gentlemen will be removed. Do you understand
11:33:04 that?

11:33:05 UNIDENTIFIED PERSON: Yes, sir.

11:33:05 THE COURT: Are you done with her?

11:33:06 MS. BIANCO: Yes, Your Honor, done.

11:33:08 MR. OAKES: Yes, Your Honor.

11:33:09 THE COURT: Do you want her subject to recall?
11:33:11 Do you want her to stick around till one o'clock or
11:33:14 not?

11:33:14 MS. PEEBLES: I don't think that's necessary,
11:33:15 Judge.

11:33:15 THE COURT: Okay, you can go, Ms. Howard. Do
11:33:18 you have another witness lined up? Probably not going
11:33:20 to be resolved in twenty minutes, right?

11:33:22 MS. PEEBLES: I think maybe we could take our
11:33:24 break now and --

11:33:25 THE COURT: Come back at one?

11:33:26 MS. PEEBLES: It makes sense, Judge.

11:33:28 THE COURT: Okay, we'll be back at one.
11:33:36 Counsel? Counsel, would you please approach?

(Whereupon, there was an off the record
11:33:53 discussion at the bench).

11:33:53 (Whereupon, there was a recess.)

12:58:52 THE COURT: Before the Court is heard with
01:02:47 regard to Exhibit 145, the Court did have some
01:02:49 discussion with Ms. Peebles and Mr. Oakes about today's
01:02:52 calendar, and Ms. Peebles, you have served a subpoena
01:02:55 on an individual by the name of Brian Mensch who has
01:03:01 told you he's not basically going to appear in less
01:03:03 than favorable terms, correct?

01:03:05 MS. PEEBLES: Right, correct.

01:03:05 THE COURT: If he does not show tomorrow
01:03:07 morning, he will be invited to appear by the Sheriff's
01:03:11 Department, okay?

01:03:11 MS. PEEBLES: Thank you.

01:03:12 THE COURT: Ms. Bianco, you may have your
01:03:14 hostile witness.

01:03:15 MS. BIANCO: Finally.

01:03:15 THE COURT: Also you had subpoenaed or had
01:03:17 planned on Ms. Wescott testifying today. She's unable
01:03:20 to do so because she's caring for her grandchildren
01:03:23 today. In all honesty, if she had started today, it
01:03:28 would probably not have been good to split her
01:03:30 testimony up any ways, so you have another witness you
01:03:32 can call, correct?

01:03:33 MS. PEEBLES: Yes, Judge.

01:03:34 THE COURT: We'll plan on Mr. Mensch first if

01:03:36 the officers can get him here by nine o'clock. If not,
01:03:38 we'll take Ms. Wescott first and he'll be last in the
01:03:42 day.

01:03:42 MS. PEEBLES: Yes.

01:03:42 THE COURT: Any problem with that, Mr. Oakes?

01:03:43 MR. OAKES: None at all, Your Honor.

01:03:45 THE COURT: Also want to on the record say
01:03:47 that if the defense concludes tomorrow, which you
01:03:50 anticipate doing tomorrow, and it's relatively early in
01:03:55 the afternoon, I'm not going to put the People first
01:03:56 witness on. I think it's unfair to the People and I
01:03:58 think it's unfair to Mr. Thibodeau to have a witness
01:04:01 half done and then adjourn for five or six weeks to try
01:04:04 to get back into the flow, so tomorrow might be an
01:04:07 early day. Any problem with that?

01:04:08 MS. PEEBLES: No, Judge.

01:04:09 THE COURT: Any problem, Mr. Oakes?

01:04:10 MR. OAKES: That's fine, Your Honor. I guess
01:04:12 I'm wondering so if we finish before noon or if we
01:04:15 can't put our witness on before noon, have someone
01:04:17 available if it's going to be afternoon?

01:04:19 THE COURT: Honestly if it's a short witness
01:04:21 and we're done, I doubt Ms. Wescott will be done before
01:04:24 noon.

01:04:25 MR. OAKES: I would doubt it.

01:04:27 THE COURT: Because we also have to have Mr. Mensch in the fold, so let's plan on the defense summing up tomorrow or closing tomorrow and then we'll reconvene in March.

01:04:34 MR. OAKES: Okay, that's fine, Your Honor.

01:04:36 THE COURT: Twenty-fourth, twenty-fifth, twenty-sixth and twenty-seventh.

01:04:39 MR. OAKES: Thank you.

01:04:41 THE COURT: Now I have been approached by Mr. Oakes and Ms. Peebles regarding the proposed Defense Exhibit 145. Are you, Ms. Peebles, based upon what you have said still wish to move 145 in?

01:04:52 MS. PEEBLES: Judge, not -- we do, Your Honor, wish to move it in. I guess it would be up to the Court in terms of the weight in terms of the identifications in the photograph.

01:05:02 THE COURT: Okay, Mr. Oakes, you're still opposing its introduction, correct?

01:05:09 MR. OAKES: Your Honor, I had spoke with counsel during the lunch break. If the Court wishes to receive it and then just leave it as a matter of the weight of the evidence, I would leave that to your discretion. And I think there are legal impediments for receiving it based upon her foundation and knowledge.

01:05:28 THE COURT: I ask the question why are you trying to move it in? Is it to impeach Mr. Steen and Mr. Breckenridge?

01:05:33 MS. BIANCO: Yes, Your Honor. They said that they didn't know her.

01:05:35 THE COURT: You can't impeach your own witness. You can't impeach them.

01:05:38 MS. BIANCO: I also think it has to do with some Brady information that was found out last night and was not disclosed to the defense.

01:05:46 THE COURT: But now you have it. It's been disclosed. Let's take -- let's deal with the Brady issue. You have it now. You want me to reserve a right for you to do a further investigation?

01:05:55 MS. PEEBLES: I think that would be appropriate actually, Judge.

01:05:57 THE COURT: Because otherwise, I will tell you the Court is going to rule that it's not admissible because you can't impeach your own witness, first. Second, even if the Court allowed that under the Brady issue, the caselaw is such that I don't believe it was properly authenticated by the young lady, Ms. Howard. It's something that's subject to being Photoshopped, and there's even question of whether there was a positive identification of one of the three individuals

01:06:22 she named. I will allow this to be Brady disclosure from the People, and if you want to revisit the issue even at some point during the People's case and you want to try to authenticate it as new evidence, I'll allow that, okay, but in terms of the Brady quality, you now have it, okay, you have time to prepare for it.

01:06:41 MS. BIANCO: Thank you, Your Honor.

01:06:42 THE COURT: Fair enough?

01:06:43 MS. PEEBLES: Yes.

01:06:43 THE COURT: But at this point Exhibit 145 is not in, it's been excluded.

01:06:49 MR. OAKES: Fair enough. Thank you.

01:06:50 THE COURT: So Ms. Bianco, would you come pick this back up? Thank you.

01:07:01 MS. BIANCO: Thank you.

01:07:07 THE COURT: Witness?

01:07:08 MS. PEEBLES: Carmen Rojek, Your Honor.

01:07:13 THE COURT: Who is not an attorney in Oswego.

01:07:15 MS. PEEBLES: He's an investigator with the Oswego County Sheriff's Department.

01:08:02 CARMEN ROJEK, Called as a witness, having been duly sworn, was examined and testified as follows:

01:08:03 THE CLERK: Please state your name for the record.

01:08:10 THE WITNESS: Carmen Rojek.

01:08:12 THE CLERK: Spell your first name.

01:08:12 THE WITNESS: C-A-R-M-E-N.

01:08:14 THE CLERK: And your last name.

01:08:15 THE WITNESS: R-O-J-E-K.

01:08:17 THE CLERK: Have a seat please.

01:08:18 THE COURT: Mr. Rojek, before any questions
01:08:20 are posed to you, I'm going to ask you whether you
01:08:24 consent to being or having your testimony video taped
01:08:27 and audio taped.

01:08:29 THE WITNESS: I prefer not.

01:08:30 THE COURT: Okay, thank you. Ms. Peebles.

DIRECT EXAMINATION

01:08:34 BY MS. PEEBLES:

01:08:34 **Q.** Investigator Rojek, how long have you been with the
01:08:37 Oswego County Sheriff's Department?

01:08:38 **A.** Since June of 1997.

01:08:40 **Q.** Were you assigned during your time -- well, strike
01:08:44 that. What were the positions that you have held during
01:08:46 your time with the Oswego County Sheriff's Department?

01:08:48 **A.** From ninety-seven to 2008, road patrol officer.
01:08:52 From 2008 to current, investigator.

01:08:58 **Q.** So you have been an investigator now for
01:09:00 approximately seven years?

01:09:01 **A.** Correct.

01:09:02 **Q.** Now were you at any time assigned to follow up on

01:09:05 leads in connection with the Heidi Allen case?

01:09:07 **A.** Yes, I was.

01:09:08 **Q.** When were you first given an assignment in
01:09:11 connection with the Heidi Allen case?

01:09:13 **A.** March first, 2013.

01:09:14 **Q.** And could you please explain what your -- what your
01:09:18 task was in connection with the Heidi Allen case?

01:09:21 **A.** It was to meet with Tonya Priest and complete a
01:09:24 controlled phone call to Jennifer Wescott.

01:09:26 **Q.** And did you do that?

01:09:27 **A.** Yes.

01:09:28 **Q.** Which day did you meet?

01:09:30 **A.** We met on two dates. It was March first and March
01:09:33 second. On March second the phone call was completed.

01:09:37 **Q.** Now, as an investigator, you use monitored or
01:09:41 controlled phone calls as an investigative tool?

01:09:44 **A.** Yes.

01:09:44 **Q.** What is the purpose in using this type of tool when
01:09:48 you're investigating a case?

01:09:50 **A.** Well, one of the purposes is to corroborate what the
01:09:53 victim or witness is telling me.

01:09:55 **Q.** And --

01:09:55 **A.** Regarding that other person on the line.

01:09:57 **Q.** Could you give us an idea about how many controlled
01:10:01 or monitored calls you have been involved in since you have

01:10:04 been an investigator?
01:10:05 **A.** Well over a hundred.
01:10:07 **Q.** Now, could you please describe the usefulness of
01:10:15 these monitored calls once you've done them as an
01:10:18 investigative tool?
01:10:20 **A.** Well, it's an element of surprise on the person that
01:10:23 we're calling where they don't expect the call to be
01:10:26 completed and discuss whatever you want them to discuss on
01:10:30 the phone.
01:10:30 **Q.** And in preparation for conducting a controlled call,
01:10:34 do you assist the person that's making the call?
01:10:37 **A.** Yes, I do.
01:10:38 **Q.** And who typically, generally speaking, when you're
01:10:42 conducting a controlled call, who are you working with when
01:10:46 you're preparing to make a call to a -- either a suspect or
01:10:49 someone who has information?
01:10:50 **A.** Either a witness or a victim.
01:10:55 **Q.** Now in this particular case, could you please
01:11:00 describe the setup of when you were going to make this
01:11:04 controlled call with Tonya Priest?
01:11:06 **A.** Well, we were planning on March first, it was right
01:11:09 around probably eleven p.m. March first from the District
01:11:14 Attorney's Office. As I remember, Jennifer Wescott was
01:11:17 communicating with Tonya Priest via Facebook, and she told
01:11:21 Tonya Priest that her oldest child, I think was a boy, had

01:11:27 her cell phone, so she was unable to make a verbal
01:11:30 communication with her that night, and she told her that
01:11:32 she would contact her the next day. Jennifer Wescott told
01:11:36 Tonya Priest.

01:11:37 **Q.** Before we get to the next day, who to your knowledge
01:11:42 was Jennifer Wescott? Why were you making this particular
01:11:45 call?

01:11:46 **A.** Well, Jennifer Wescott was the person that Tonya
01:11:50 Priest was alleging had information regarding Heidi Allen.

01:11:55 **Q.** Now, the following day would be March second of 2013
01:12:02 when you conducted the controlled call?

01:12:04 **A.** Correct.

01:12:04 **Q.** And could you please describe what happened on that
01:12:07 day?

01:12:08 **A.** Well, I met with Tonya Priest in the District
01:12:12 Attorney's Office. We were utilizing the library to make
01:12:15 the phone call. I believe we made some attempts, but
01:12:19 Jennifer Wescott wasn't answering, and at one point a child
01:12:26 phoned -- she was using her cell phone to make the
01:12:29 controlled phone call with. A child phoned her phone, it
01:12:33 was just child talk, nothing where an adult was talking.
01:12:39 That hung up, and then soon after that, Jennifer Wescott
01:12:43 called.

01:12:43 **Q.** And how was it -- how was the controlled call being
01:12:47 monitored?

01:12:48 **A.** I was using a digital voice recorder. I used
01:12:52 headphones to listen in on the conversation with and an
01:12:57 earbud to place in Tonya Priest's -- her ear.

01:13:00 **Q.** So could you hear what was being said on the other
01:13:03 end of the phone?

01:13:04 **A.** Correct.

01:13:05 **Q.** So you could hear what Tonya Priest was saying, and
01:13:08 you could also hear how Jennifer Wescott was responding or
01:13:12 what she was saying?

01:13:13 **A.** Correct.

01:13:13 **Q.** Now, in preparation for this monitored call, was
01:13:16 there some type of pretext that you came up with in order
01:13:19 to get her to start talking?

01:13:21 **A.** Well, she developed a theme to use, her ex, Rubin,
01:13:26 that he had information regarding knowledge of Heidi Allen,
01:13:32 and he was going to use that to gain access to her journal.
01:13:37 It was just a theme built to get an in with Jennifer
01:13:41 Wescott.

01:13:41 **Q.** And who came up with the theme?

01:13:43 **A.** She did, Tonya Priest.

01:13:44 **Q.** And were you in agreement with that particular
01:13:47 theme?

01:13:47 **A.** Yes.

01:13:47 **Q.** And when you're using themes if you will for
01:13:55 monitored phone calls, why's that an important thing to do?

01:13:59 **A.** You don't want to alert the person on the other end,
01:14:02 you don't want to be right in their face. They're more
01:14:05 likely to tell you nothing or just hang up on you. You
01:14:09 want to minimize what you want on the phone with them.

01:14:14 **Q.** Now, I'm going to ask you during the course of the
01:14:20 conversation were you writing any kind of notes to Tonya
01:14:25 Priest to tell her what to say?

01:14:26 **A.** Yes.

01:14:27 **Q.** What to ask. Do you recall what questions you were
01:14:33 asking her?

01:14:35 **A.** Not specifically.

01:14:37 **Q.** If I showed you your notes, would that refresh your
01:14:40 recollection?

01:14:40 **A.** Yes.

01:14:44 **Q.** I'm going to hand you what's been marked as Defense
01:14:48 Exhibit 136 and ask if you could read your notes to
01:14:51 yourself and see if that helps refresh your recollection
01:14:54 about what you asked or what you were telling her to ask
01:14:56 Jennifer Wescott.

01:14:57 (Whereupon, there was a pause in the
01:15:37 proceeding.)

01:15:37 **A.** Okay, as I remember, she didn't say everything that
01:15:40 I wanted her to, she used her own dialogue for most of it.

01:15:45 **Q.** Did you tell her to ask if she didn't come in the
01:15:50 house, where did they bring her?

01:15:52 **A.** Yes.

01:15:53 **Q.** Is that one of the questions? And did you tell her
01:15:57 to ask who actually killed her?

01:16:00 **A.** Yes.

01:16:01 **Q.** And did you ask, "Did you ever think of turning them
01:16:04 in," was that your question?

01:16:06 **A.** Yes.

01:16:06 **Q.** And did you tell her to ask, "Tell me what you saw
01:16:12 when they brought Heidi in the van to your house?"

01:16:15 **A.** Yes.

01:16:17 **Q.** And do you remember whether Wescott during the phone
01:16:20 conversation indicated whether she was afraid to say
01:16:22 anything to anybody?

01:16:23 **A.** Yes.

01:16:23 **Q.** Do you remember if she named anybody?

01:16:27 **A.** Well, actually as I remember, Tonya injected that
01:16:32 into her -- I think she said, "You were afraid of Roger."

01:16:36 **Q.** Um hum.

01:16:36 **A.** And she agreed.

01:16:38 **Q.** And did she name anyone else she was afraid of?

01:16:40 **A.** You know, I'd have to listen to the phone call.

01:16:43 **Q.** Did you hear her say the name Dan Barney?

01:16:48 MR. OAKES: Objection, Your Honor, as to
01:16:51 hearsay.

01:16:51 THE COURT: Yes, it's hearsay. Don't answer

01:16:55 the question, investigator. It's not falling into --
01:16:58 apparently trying to fall into the issue of the
01:17:00 statement against penal interest.

01:17:01 MS. PEEBLES: No, Judge.

01:17:02 THE COURT: That's hearsay.

01:17:03 MS. PEEBLES: Well, I guess it's just a
01:17:05 question of what was done to follow up on the
01:17:07 information that was elicited during the phone call.
01:17:09 I'm not offering it for the truth of the matter other
01:17:11 than whether it was said.

01:17:13 THE COURT: Mr. Oakes?

01:17:15 MR. OAKES: I think she can ask the
01:17:17 investigator, being laid as an investigative
01:17:21 foundation, just ask him based upon what you heard,
01:17:23 what did you next.

01:17:24 THE COURT: Why don't you do that without
01:17:26 mentioning names.

01:17:27 **Q.** Other than Roger, her being afraid of Roger, were
01:17:30 there other names that were mentioned during the phone
01:17:32 call?

01:17:32 **A.** Yes.

01:17:32 MR. OAKES: Objection, Your Honor.

01:17:33 THE COURT: No, this is foundational, I'll
01:17:35 allow that.

01:17:36 **Q.** Were there other names mentioned during the phone

01:17:39 call?

01:17:39 **A.** Yes.

01:17:40 **Q.** As a result of those names, do you know what
01:17:45 followup investigation was conducted?

01:17:47 **A.** After the phone call?

01:17:49 **Q.** Yes.

01:17:49 **A.** I gave the -- I burned it to a CD and I gave that CD
01:17:53 to Investigator Pietroski.

01:17:56 **Q.** Were you involved in the followup investigation at
01:18:00 that point after the monitored phone call?

01:18:02 **A.** No.

01:18:03 **Q.** And do you know why you were involved in doing the
01:18:06 monitored phone call?

01:18:07 MR. OAKES: Objection, relevance.

01:18:10 THE COURT: Yeah. What is the relevance of
01:18:11 why he was involved?

01:18:12 MS. PEEBLES: I'm just trying to gauge what
01:18:14 his involvement was during this time period so -- and
01:18:18 why Pietroski wasn't doing the audio.

01:18:22 THE COURT: I'll allow it I guess.

01:18:24 **Q.** Do you know?

01:18:25 **A.** I was advised by my lieutenant, Ken Pitcher, to take
01:18:32 over at this point, which was on March first, and meet with
01:18:35 Tonya Priest to make the controlled phone call. That was
01:18:39 my goal.

01:18:39 **Q.** And after that did you have any other assignments at that time in connection with this followup investigation?

01:18:46 **A.** In time but not immediately after that.

01:18:48 **Q.** Were you involved at all with regard to the interview of Jen Wescott on March seventh of 2013?

01:18:57 **A.** No.

01:18:58 **Q.** Did there come a point in time where you ever listened to the March seventh, 2013 interview of Jen Wescott?

01:19:06 **A.** Yes.

01:19:06 **Q.** And did you take notes?

01:19:08 **A.** Yes, I did.

01:19:09 **Q.** And did you compare her audio recording with -- with the notes that you took after you listened to the interview?

01:19:16 **A.** Well, the notes I took were in preparation of -- I was planning on meeting with her and interviewing her myself, so I'd listen to Investigator Pietroski's interview with her first to get information in how to theme my interview with Jennifer.

01:19:32 **Q.** And did you notice a difference between what was stated on the monitored call that you were involved in versus what you heard when you were listening to the interview between Mr. Pietroski, Investigator Pietroski and Jen Wescott?

01:19:46 MR. OAKES: Objection, Your Honor.

01:19:47 THE COURT: What's the objection?

01:19:49 MR. OAKES: Relevance.

01:19:50 THE COURT: I'll allow it.

01:19:52 **A.** Now could you rephrase that? I don't understand
01:19:54 what you --

01:19:55 **Q.** Yeah. Did you notice a difference between what Ms.
01:19:59 Wescott said during her interview with Investigator
01:20:02 Pietroski on March seventh of 2013 versus what you heard
01:20:06 when you were monitoring the phone call on March second of
01:20:09 2013?

01:20:11 **A.** I still don't understand. You want a difference in
01:20:16 the interview with Pietroski to what I heard?

01:20:19 **Q.** Well, let me ask you this. Did Jen Wescott deny the
01:20:22 contents of the phone call during her initial -- during --
01:20:25 initially during her interview with Investigator Pietroski?

01:20:28 **A.** As I remember, she denied having a communication
01:20:31 with Tonya.

01:20:32 **Q.** And did she eventually admit that she had a
01:20:41 conversation with Tonya Priest?

01:20:42 **A.** Yes.

01:20:43 **Q.** And when -- during the course of the interview, when
01:20:48 was that?

01:20:49 **A.** With Investigator Pietroski?

01:20:51 **Q.** Yes.

01:20:52 **A.** I don't know where in the interview, but she did admit to receiving a phone call from Tonya.

01:20:57 **Q.** Was it after he confronted her with the fact that there was a monitored phone call?

01:21:01 **A.** Yes.

01:21:01 **Q.** Now was there an effort to re-interview Ms. Wescott at some point in time?

01:21:10 **A.** Yes.

01:21:10 **Q.** And when was that?

01:21:12 **A.** August fourth, 2014.

01:21:14 **Q.** Were you involved in that?

01:21:15 **A.** Yes, I was.

01:21:16 **Q.** Was anyone else present with you?

01:21:21 **A.** District Attorney Oakes.

01:21:23 **Q.** And how long was that interview?

01:21:27 **A.** The total interview was over four hours.

01:21:31 **Q.** And prior to the interview of August of -- that was 2014, correct?

01:21:37 **A.** Correct.

01:21:37 **Q.** And prior to that interview, do you know whether Mr. Oakes had any other meeting with Ms. Wescott before that?

01:21:43 MR. OAKES: Objection, foundation.

01:21:45 THE COURT: What's the relevance?

01:21:50 MS. PEEBLES: Well, it's in preparation for this re-interview of her, so I kind of think it's

01:21:55 relevant.

01:21:56 THE COURT: How's it relevant if he knows that
01:21:58 Mr. Oakes spoke to her before he spoke to her unless he
01:22:01 was present?

01:22:01 MS. PEEBLES: They basically used that in
01:22:04 order to prepare for the interview of her in 2014 so --

01:22:08 THE COURT: Okay, I'll allow it, but don't ask
01:22:11 him any questions about what Mr. Oakes may have said to
01:22:13 Ms. Wescott.

01:22:14 MS. PEEBLES: I won't.

01:22:15 THE COURT: Or anything she may have said to
01:22:16 him. Okay, thank you.

01:22:17 **Q.** Investigator Rojek, did you know whether or not Ms.
01:22:22 Wescott had been interviewed before the re-interview by Mr.
01:22:27 Oakes before you met with her in August of 2014?

01:22:29 **A.** Yes.

01:22:31 **Q.** And did you do -- did you discuss that in
01:22:35 preparation for the August of 2014 interview?

01:22:38 **A.** Yes.

01:22:39 **Q.** And what was the course of action after the meeting
01:22:46 Mr. Oakes had at Sal Lanza's office with Jennifer Wescott?

01:22:52 MR. OAKES: Objection, Your Honor.

01:22:53 THE COURT: I'm not sure if I understand the
01:22:54 question. I apologize.

01:22:55 MS. PEEBLES: I'm not sure I understood the

01:22:57 question.

01:22:57 THE COURT: Ask the question.

01:23:00 MS. PEEBLES: I'll strike it.

01:23:01 **Q.** After the meeting with -- at Sal Lanza's office, a re-interview was schedule in August of 2014, right?

01:23:12 **A.** Correct.

01:23:12 **Q.** And how did -- how did that come about?

01:23:17 **A.** DA Oakes set up an interview to meet with Jennifer Wescott through Sal Lanza.

01:23:24 **Q.** And was he present? I guess that's what I'm getting at. Was he present during this re-interview in August of 2014?

01:23:31 MR. OAKES: Is he referring to attorney Lanza?

01:23:33 MS. PEEBLES: Sal Lanza.

01:23:35 THE COURT: Okay, that's what I want to find out.

01:23:36 **A.** Attorney Lanza was not present.

01:23:38 **Q.** Was he available by phone at any point in time?

01:23:40 **A.** He was available.

01:23:40 **Q.** Was there an arrangement that was made?

01:23:42 **A.** There was.

01:23:43 **Q.** And who made the decision to have you rather than Investigator Pietroski interview Jennifer Wescott in August of 2014, do you know?

01:24:04 MR. OAKES: Objection. What's the relevance, 01:24:06 Your Honor?

01:24:06 THE COURT: Yeah, what's the relevance, Ms.
01:24:08 Peebles?

01:24:10 MS. PEEBLES: Well, I'm going to ask him if
01:24:12 there was.

01:24:12 THE COURT: Well, why's it relevant who
01:24:14 assigned him and who decided? I'm going to sustain the
01:24:17 objection.

01:24:17 **Q.** Did you talk to Investigator Pietroski before you
01:24:20 did this interview with Jennifer Wescott?

01:24:21 **A.** Yes, I did.

01:24:22 **Q.** And did you discuss the previous interview of
01:24:25 Jennifer Wescott with Pietroski?

01:24:27 **A.** I didn't discuss the content of the interview, I
01:24:30 just let him know that I was going to be interviewing
01:24:34 Jennifer Wescott.

01:24:35 **Q.** Now, during the course of your interview in August
01:24:44 of 2014 with Jennifer Wescott, you confronted her with the
01:24:49 audio recording, correct?

01:24:51 **A.** Correct.

01:24:51 **Q.** And you wanted to play that audio recording for her,
01:24:55 correct?

01:24:55 **A.** Correct.

01:24:55 **Q.** And she didn't want you to play that recording,
01:24:58 right?

01:24:59 **A.** Correct.

01:24:59 **Q.** Did you play the whole recording for her?

01:25:03 **A.** Not the whole recording. Some of it.

01:25:06 **Q.** Now you knew -- well, I should ask you. Did you know whether she had given a previous statement under oath after her initial interview with Investigator Pietroski in 2013?

01:25:22 **A.** A written statement?

01:25:23 **Q.** Yes.

01:25:23 **A.** Yes.

01:25:24 **Q.** And did you have an opportunity to review the written statement?

01:25:27 **A.** Yes, I did.

01:25:29 **Q.** Was there a concern regarding whether she was exposed for executing a false statement?

01:25:37 MR. OAKES: Objection, relevance. Concern by whom, Your Honor?

01:25:44 THE COURT: Yeah. Why is it relevant? Are you trying to establish it was in fact a declaration against penal interest?

01:25:51 MS. PEEBLES: Judge, well, I think there is a combination of things going on here, but first and foremost, there was -- obviously she was exposed to potential punishment if she in fact executed a false statement, and that would be an issue or something that

01:26:04 would be used during the course of the interview of
01:26:08 Jennifer in August of 2014 because she signs another
01:26:11 statement which I'm getting to in a minute.

01:26:13 THE COURT: You mean in a threatening manner
01:26:16 or just as a fact?

01:26:17 MS. PEEBLES: Just as a factual matter.

01:26:19 THE COURT: I'll allow it.

01:26:21 **A.** You're going to have to refresh my memory on what
01:26:24 she actually wrote with Investigator Pietroski. I'd have
01:26:28 to read that statement again.

01:26:29 **Q.** Did she voice any concern about having executed a
01:26:32 false statement that you recall?

01:26:34 **A.** In Investigator Pietroski's interview with her?

01:26:37 **Q.** Yes.

01:26:38 **A.** I'd have to refresh my memory on that. I listened
01:26:41 to the video prior to the interview but I -- I forgot what
01:26:44 she said.

01:26:45 **Q.** Well, I guess my question is -- I'm referring to
01:26:49 your interview with her in August.

01:26:51 **A.** Um hum.

01:26:52 **Q.** Is that what your understanding is as well?

01:26:54 **A.** I thought you were referring to Investigator
01:26:57 Pietroski's interview.

01:26:58 **Q.** I'm actually referring to her inter -- your
01:27:01 interview with her in August of 2014 and whether she had a

01:27:04 concern about previously executing a false statement when
01:27:06 she was interviewed by Pietroski.

01:27:08 MR. OAKES: Objection, Your Honor, as to
01:27:11 hearsay. Either he'd have to speculate as to whether
01:27:13 she did have concern, and if she did articulate a
01:27:17 concern, it's hearsay.

01:27:18 MS. PEEBLES: I'm not offering it for the
01:27:20 truth of the matter.

01:27:20 THE COURT: I'll allow it. I have it before
01:27:24 me. I'm not sure I need additional testimony.

01:27:28 MS. PEEBLES: All right.

01:27:28 THE WITNESS: And if she did, it's in the
01:27:29 video. I can't remember that part.

01:27:35 **Q.** During the course of the interview you had with her,
01:27:40 did you question her about an individual named Chris
01:27:43 Combes?

01:27:43 **A.** Yes.

01:27:44 **Q.** And did you ask her whether she knew Chris Combes?

01:27:48 **A.** Yes.

01:27:48 **Q.** Do you know why you were asking her questions about
01:27:51 Chris Combes?

01:27:52 **A.** A lead came in where he was providing some
01:27:54 information, and I just wanted to put that name out to see
01:27:57 if she knew who Chris Combes was in relation to Roger
01:28:01 Breckenridge.

01:28:02 **Q.** And did you yourself ever interview Chris Combes?

01:28:07 **A.** No.

01:28:07 **Q.** Now during the course of your interview with
01:28:23 Jennifer Wescott, you told her that you felt there was some
01:28:28 substance to her phone conversation with Jennifer Wescott.
01:28:32 Do you remember saying that?

01:28:32 **A.** Yes.

01:28:33 **Q.** And you also said that there seemed to be a common
01:28:37 thread between the names Bohrer, Steen and Breckenridge.
01:28:42 Do you recall saying that?

01:28:43 **A.** Yes.

01:28:44 **Q.** And there were several occasions during the course
01:28:56 of the interview where you said you just couldn't get over
01:28:59 the phone call. Do you remember saying that?

01:29:01 **A.** Yes.

01:29:02 **Q.** And at one point you said, "It sounded like you were
01:29:16 confiding in a friend and what you were talking about was
01:29:19 really troubling you." Do you remember saying that?

01:29:21 MR. OAKES: Objection, Your Honor. I guess
01:29:23 what's the relevance of what the investigator said to
01:29:25 Ms. Wescott or what the investigator's thoughts were?

01:29:31 MS. PEEBLES: Well, I think it's relevant,
01:29:33 Judge.

01:29:33 THE COURT: I know you think it's relevant,
01:29:35 but why do you think it's relevant?

01:29:38 MS. PEEBLES: I think simply because he was conducting the interview is how he was attempting to elicit information from Ms. Wescott and trying to get her to be honest because he was part of the phone call.
01:29:39
01:29:42
01:29:44

01:29:48 THE COURT: I'll allow it. It's before me already isn't it?
01:29:50

01:29:52 MS. PEEBLES: I'm sorry, I missed that.

01:29:54 THE COURT: I already have it before me, right?
01:29:55

01:29:56 MS. PEEBLES: Yes.

01:29:56 THE COURT: I'll allow it.

01:29:58 **Q.** You can answer.

01:29:59 **A.** Could you ask the question?

01:30:00 (Whereupon, the court reporter read back the last question).
01:30:22

01:30:23 **Q.** You can answer.

01:30:24 **A.** Yes, I do remember.

01:30:25 **Q.** When you're investigating the authenticity of a writing as an investigator, not specific to this particular case, but in general, do you oftentimes look at the language that is used by an individual in another context to compare it to whatever writing it is you're looking to authenticate?
01:30:36
01:30:39
01:30:43
01:30:47
01:30:49

01:30:51 **A.** I can't remember a case where I have ever done that. I suppose you could if you knew the person, the way they
01:30:56

01:30:58 wrote, the style they wrote.

01:31:02 **Q.** And did you ask Ms. Wescott to execute a statement
01:31:07 in her own words after your interview with her in August of
01:31:10 2014?

01:31:11 **A.** Yes.

01:31:12 **Q.** And did she in fact do that?

01:31:13 **A.** Yes, she did.

01:31:14 **Q.** And was there an arrangement to have her subjected
01:31:17 to a polygraph examination after that interview?

01:31:20 MR. OAKES: Objection. Relevance, Your Honor.

01:31:22 THE COURT: Yeah. We all know polygraphs
01:31:25 aren't relevant.

01:31:25 MS. PEEBLES: I'm not asking him about the
01:31:27 results, I'm just asking him about the followup and
01:31:29 what their intentions were after the interview.

01:31:31 THE COURT: Okay, as long as we don't get into
01:31:33 the results of polygraph.

01:31:34 MS. PEEBLES: I'm not going to get into the
01:31:35 results of the polygraph, Judge.

01:31:37 **A.** I wasn't involved with the setup.

01:31:39 **Q.** Did you know they were scheduling a polygraph
01:31:41 examination?

01:31:42 **A.** I knew of the possibility, but I didn't know it was
01:31:46 an actual agreement to do it.

01:31:48 **Q.** And did you have any involvement in this case with

01:31:53 Jennifer Wescott after your interview with her on August of
01:31:57 2014?

01:31:57 **A.** No.

01:32:07 MS. PEEBLES: Nothing further, thank you.

01:32:08 THE COURT: Thank you. Mr. Oakes or Mr.
01:32:10 Moody, just give me a second please.

01:32:12 (Whereupon, there was a pause in the
01:32:26 proceeding.)

01:32:26 THE COURT: Okay.

01:32:27 MR. OAKES: Actually, Your Honor, I have no
01:32:39 questions.

01:32:39 THE COURT: Okay. Investigator, you can step
01:32:42 down.

01:32:42 THE WITNESS: Thank you.

01:32:42 THE COURT: Thank you. Unfortunately that
01:32:56 brings us to an end today because I see Ms. Wescott's
01:32:59 not available.

01:33:00 MS. PEEBLES: Unfortunately.

01:33:01 THE COURT: Mr. Mensch is probably going to be
01:33:03 brought here tomorrow by a sheriff.

01:33:07 MS. PEEBLES: I think so.

01:33:08 THE COURT: Unfortunately, people in the
gallery, sometimes this happens. Again, we're sorry
01:33:11 for the delay, but Ms. Peebles isn't trying to delay
01:33:13 it, nor the People nor the Court, it just happens in

01:33:17 court sometimes. So we're adjourned until nine o'clock
01:33:19 tomorrow morning. Ms. Peebles, you might want to send
01:33:22 maybe an investigator out to see if he's going to show
01:33:24 up voluntarily or not. Mr. Oakes can be contacted to
01:33:29 have him invited here by an officer in a uniform.

01:33:36 MR. OAKES: Certainly, Your Honor. Judge, can
01:33:38 we approach?

01:33:44 (Whereupon, there was an off the record
01:33:45 discussion at the bench).

01:36:48 THE COURT: Court's in recess until tomorrow
01:36:50 morning at nine.

(Conclusion of Proceeding).

* * *

C E R T I F I C A T E

I, JENNIFER ADYDAN, an Official Court Reporter in and for the State of New York, Fifth Judicial District, do hereby certify that the foregoing is a true, complete and accurate transcript of my stenographic notes taken in the above-entitled matter and the whole thereof to the best of my ability.

Jennifer Adydan

Jennifer Adydan
Official Court Reporter

DATED: February 22, 2015

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF OSWEGO: CRIMINAL TERM:

---------------------------------------x

THE PEOPLE OF THE STATE OF NEW YORK

Indict. No.
94C-0161

HEARING
VOLUME 8

- against-

GARY THIBODEAU,

Defendant.

---------------------------------------x

Oswego County Courthouse
25 E. Oneida Street
Oswego, NY 13126

DATE: February 6, 2015

Before:

HONORABLE DANIEL R. KING
Acting County Court Judge

Appearances:

GREGORY S. OAKES, ESQ.
District Attorney, Oswego County
MARK M. MOODY, ESQ.
Chief Assistant District Attorney

OFFICE OF THE FEDERAL PUBLIC DEFENDER
BY: LISA PEEBLES, ESQ., Public Defender
RANDI JUDA BIANCO, ESQ., Assistant Public Defender

Defendant is present

INDEX TO WITNESSES

	Direct	Cross	Redirect	Recross
FOR THE PEOPLE:				
None				
FOR THE DEFENDANT:				
Brian Mensch	1284	1297	--	--
Jennifer Wescott	1309	1398	1425	--

09:27:13 THE COURT: My apologies to everyone for
09:27:14 running late today. We'll get moving quickly though.
09:27:17 Ms. Peebles, Mr. Oakes, ready to move forward today?

09:27:20 MS. PEEBLES: Yes, Your Honor.

09:27:21 MR. OAKES: We are, Your Honor.

09:27:22 THE COURT: Ms. Bianco, before you call your
09:27:25 witness, you wish to withdraw your request for Exhibit
09:27:28 145 to be introduced?

09:27:30 MS. BIANCO: I do, Your Honor.

09:27:30 THE COURT: Any objection?

09:27:33 MR. OAKES: No, Your Honor.

09:27:33 THE COURT: Number 145 not being requested to
09:27:38 be in evidence. Your next witness?

09:27:41 MS. PEEBLES: Brian Mensch.

09:27:42 THE COURT: Brian Mensch. Would you bring him
09:27:45 in please?

09:28:05 THE CLERK: Raise your right hand and put your
09:28:20 left on the Bible.

BRIAN MENSCH, Called as a witness, having been
09:28:24 duly sworn, was examined and testified as follows:

09:28:24 THE CLERK: Please state your name for the
09:28:31 record.

09:28:31 THE WITNESS: Brain Mensch.

09:28:32 THE CLERK: Spell your first name.

09:28:34 THE WITNESS: B-R-I-A-N.

09:28:36 THE CLERK: And your last name.

09:28:37 THE WITNESS: M-E-N-S-C-H.

09:28:39 THE CLERK: Have a seat please.

09:28:40 THE COURT: Mr. Mensch, before any questions 09:28:41 are asked of you, I'm going to ask you whether or not 09:28:44 you consent to having your testimony audio/video taped.

09:28:49 THE WITNESS: Whether I consent now?

09:28:50 THE COURT: Yes.

09:28:51 THE WITNESS: I would rather not.

09:28:52 THE COURT: That's fine. Thank you.

DIRECT EXAMINATION

09:28:54 BY MS. PEEBLES:

09:28:56 **Q.** Good morning, Mr. Mensch.

09:28:57 **A.** Good morning.

09:28:58 **Q.** How old are you?

09:28:58 **A.** Forty-three.

09:28:59 **Q.** And where did you grow up?

09:29:01 **A.** In the Parish area.

09:29:02 **Q.** And how long have you lived in Oswego County?

09:29:05 **A.** Since 1981.

09:29:07 **Q.** Were you ever in the military?

09:29:09 **A.** Yes.

09:29:09 **Q.** And when were you in the military?

09:29:11 **A.** From 1981 till 1991. 1989 till 1991.

09:29:17 **Q.** And when you returned from the military, where were

09:29:20 you living?

09:29:21 A. On Sparhawk Road.

09:29:23 Q. And who lived at Sparhawk Road back then?

09:29:26 A. My parents and myself.

09:29:27 Q. And how -- how long did you stay at Sparhawk Road 09:29:32 after you returned from the military?

09:29:33 A. Probably four or five months before I got my own 09:29:36 apartment.

09:29:36 Q. And where did you move after you moved out of your 09:29:39 parents' home on Sparhawk Road?

09:29:41 A. To Bengal Road in Parish.

09:29:44 Q. And how long did you stay in the apartment on Bengal 09:29:46 Road in Parish?

09:29:47 A. About a year.

09:29:48 Q. And from where -- from there where did you go?

09:29:51 A. I stayed in the apartment at -- on Rice Road for a 09:29:58 little while, maybe a month.

09:30:00 Q. Who did you rent from?

09:30:02 A. Debbie Vecchio.

09:30:02 Q. And do you remember what year that was?

09:30:05 A. I'm thinking it was early ninety-three, late 09:30:10 ninety-three, early ninety-four.

09:30:13 Q. Now, when you were in that garage apartment, was 09:30:16 there anybody living in the trailer at that time?

09:30:19 A. Not that I was aware of, no.

09:30:21 **Q.** And the trailer is right next to where the garage
09:30:23 is?

09:30:24 **A.** Yes.

09:30:25 **Q.** And you said you stayed at the apartment off the
09:30:29 garage for approximately how long?

09:30:30 **A.** About a month.

09:30:31 **Q.** And was anybody else living with you at that time?

09:30:34 **A.** Yeah, my roommate.

09:30:38 **Q.** Now, I'm going to ask you some questions about an
09:30:42 individual named Chris VanPatten. Do you know Chris
09:30:45 VanPatten?

09:30:45 **A.** Yes, I do.

09:30:46 **Q.** How do you know him?

09:30:47 **A.** We worked together at Easy Truck Stop before I went
09:30:49 in the military, and then just knew him a little bit from
09:30:53 being in the fire department, he was in the Sheriff's
09:30:55 Department.

09:30:55 **Q.** When you returned from the military, Chris VanPatten
09:31:00 was at the Sheriff's Department then?

09:31:02 **A.** He was in the Sheriff's Department at the time, yes.

09:31:04 **Q.** And did you have any contact with him after he
09:31:06 became a Sheriff's deputy?

09:31:08 **A.** On and off mainly passing, passing by, but he -- I
09:31:14 did see him a couple of times, you know, out and about.

09:31:17 **Q.** Did you ever see Deputy VanPatten at Champs Corners?

09:31:25 **A.** Yes, I have.

09:31:26 **Q.** What is Champs Corners?

09:31:27 **A.** It was a local bar down in Hastings on Route 11.

09:31:31 **Q.** When -- when were you at Champs Corners when you had
09:31:35 contact with Chris VanPatten?

09:31:37 **A.** In between the time -- the winter of ninety-one till
09:31:43 sometime in ninety-three.

09:31:44 **Q.** And do you -- was anyone with Chris VanPatten when
09:31:50 you had contact with him at Champs Corners?

09:31:53 **A.** Yes. He was with three of his friends.

09:31:55 **Q.** What were you doing in Champs Corners when you had
09:31:58 contact with Chris VanPatten?

09:32:00 **A.** I was playing disk jockey on Friday and Saturday
09:32:04 nights.

09:32:05 **Q.** Do you recall having a conversation with Chris
09:32:09 VanPatten while you were DJing at Champs Corners?

09:32:12 **A.** Yes.

09:32:13 **Q.** And this was what year approximately if you
09:32:16 remember?

09:32:16 **A.** Approximately 1992.

09:32:18 **Q.** And what did -- what was the nature of the
09:32:21 conversation that you had with Mr. VanPatten?

09:32:24 **A.** He told me --

09:32:25 MR. MOODY: That calls for hearsay.

09:32:27 MS. PEEBLES: I'm not offering it for the

09:32:28 truth of the matter, Judge.

09:32:29 THE COURT: What are you offering it for?

09:32:30 MS. PEEBLES: I'm offering it for the effect
09:32:32 on the listener.

09:32:32 THE COURT: Then don't say what VanPatten
09:32:35 said. The way to address that is after that
09:32:37 conversation with Mr. VanPatten, how did you react, not
09:32:39 what VanPatten said, because you're tossing it out
09:32:42 there to be prejudicial and/or inflammatory.

09:32:44 MS. PEEBLES: I'm absolutely not offering it
09:32:46 for the truth of the matter asserted, Judge.

09:32:48 THE COURT: I'm not going to allow what Mr.
09:32:49 VanPatten said. I will allow what his response was.
09:32:52 That's fine.

09:32:53 **Q.** Well, what was your reaction to what -- what did you
09:32:58 say in response to Chris VanPatten's statements to you?

09:33:01 **A.** I told him --

09:33:03 MR. MOODY: I'm going to object to relevance,
09:33:04 Judge.

09:33:04 THE COURT: Relevance?

09:33:06 MR. MOODY: Yes.

09:33:06 MS. PEEBLES: Your Honor, it's relevant. He
09:33:09 was asking for information regarding drug activity at
09:33:12 Champs Corners and asking him, Mr. Mensch specifically
09:33:18 himself about what he knew about drug activity at

09:33:21 Champs Corners. Anything Chris VanPatten stated to Mr. Mensch is not being offered for the truth of the matter asserted.

09:33:28 THE COURT: Why's it relevant?

09:33:29 MS. PEEBLES: It's relevant because it does have an impact on or effect on the listener. Whether it's true or not is irrelevant. It's what they believed in terms of what he said. Whether the actual statement --

09:33:40 THE COURT: My question is why is VanPatten's questioning of this gentleman in 1992 relevant to the present case?

09:33:46 MS. PEEBLES: It has to do with the drug activity and the motive behind the abduction of Heidi Allen.

09:33:54 THE COURT: I'll allow it. Is seems like a huge stretch but I'll allow it.

09:33:59 **Q.** You can answer.

09:34:00 **A.** He asked me if I knew anything about the drug scene going on in bars and the parties around Oswego County.

09:34:08 **Q.** And did you tell him anything?

09:34:09 **A.** I told him I didn't know anything.

09:34:12 **Q.** Did he ever disclose information about anybody else working as a CI to you?

09:34:21 MR. MOODY: I'm going to object again.

09:34:22 Relevance and hearsay, Judge.

09:34:24 THE COURT: Hearsay. I'm going to sustain on
09:34:25 hearsay.

09:34:26 MS. PEEBLES: Again Your Honor, I'm not
09:34:27 offering it for the truth of the matter asserted.

09:34:29 THE COURT: I believe that you are. I'm going
09:34:31 to sustain the objection. I'm going to -- yes.

09:34:34 **Q.** Now do you know an individual by the name of James
09:34:39 Steen?

09:34:39 **A.** Yes, I do.

09:34:40 **Q.** And how long have you known James Steen?

09:34:42 **A.** On and off twenty years.

09:34:44 **Q.** You met him in about approximately what year, the
09:34:51 early nineties?

09:34:51 **A.** Early nineties.

09:34:53 **Q.** And what was the nature of your relationship with
09:34:56 Mr. Steen?

09:34:57 **A.** He was a mutual friend. We had mutual friends.

09:35:02 **Q.** And did you ever purchase marijuana from Mr. Steen?

09:35:06 **A.** Yes.

09:35:06 **Q.** Do you remember what year that was?

09:35:10 **A.** Ninety-two or ninety-three.

09:35:13 **Q.** And do you know an individual by the name of Roger
09:35:15 Breckenridge?

09:35:16 **A.** Yes, I do.

09:35:17 **Q.** And how do you know Roger Breckenridge?

09:35:19 **A.** Same mutual friend.

09:35:20 **Q.** And did you ever purchase marijuana off of Roger Breckenridge?

09:35:25 **A.** Yes.

09:35:25 **Q.** Do you remember when that was?

09:35:26 **A.** In the early to mid-nineties.

09:35:28 **Q.** Do you know an individual by the name of Michael Bohrer?

09:35:31 **A.** Yes.

09:35:32 **Q.** How do you know Michael Bohrer?

09:35:33 **A.** He was the computer -- the local computer guy, and I used to bring my computers to him to get them fixed.

09:35:42 **Q.** Did you ever purchase marijuana off of Michael Bohrer?

09:35:45 **A.** Yes, I have.

09:35:46 **Q.** Where were you when you purchased marijuana off of Michael Bohrer?

09:35:49 **A.** At the Medspars company that he owned in Parish.

09:35:55 **Q.** Mr. Mensch, were you a member of a motorcycle club?

09:36:04 **A.** Yes, I was.

09:36:05 MR. MOODY: Going to object to relevance, Judge, and foundation as to when.

09:36:11 THE COURT: What's the -- how is it relevant? I know you -- how is this relevant? There's no time to

09:36:18 any -- so far any testimony to this motorcycle club.

09:36:22 MS. PEEBLES: I was just going to ask him
09:36:24 about his affiliations and relationships with people
09:36:27 within. That's all, Judge.

09:36:27 THE COURT: Well, Steen, Breckenridge and
09:36:30 Bohrer specifically?

09:36:31 MS. PEEBLES: Well, I'm going to get to that.
09:36:33 In particular, Steen, but --

09:36:36 THE COURT: I'll allow it. It's awful thin
09:36:39 but I'll allow it. Go ahead, sir.

09:36:41 **Q.** You can answer.

09:36:41 **A.** Yes. I was a member of the Vicious Circle
09:36:44 Motorcycle Club.

09:36:45 **Q.** Now that motorcycle club was formed in what year?

09:36:47 **A.** The Oswego chapter was formed in 2007.

09:36:52 **Q.** Did Mr. Steen ever affiliate with anyone who was a
09:36:57 member of the Vicious Circle during that time period that
09:36:59 you know of?

09:37:00 MR. MOODY: I'm going to object to the
09:37:01 relevance, Judge, of 2007.

09:37:03 THE COURT: Sustained. How's 2007 relevant to
09:37:07 1994?

09:37:08 MS. PEEBLES: Because we had Megan Shaw
09:37:10 testify about admission that Mr. Steen made and she
09:37:12 mentions him talking about Vicious Circle so that's why

09:37:16 it's relevant.

09:37:17 THE COURT: I'm going to sustain the
09:37:18 objection.

09:37:19 **Q.** Mr. Mensch, do you know whether there were people
09:37:23 buying and selling drugs out of Champs Corners?

09:37:25 **A.** No, I don't know.

09:37:27 **Q.** And were you willing to disclose any of that
09:37:32 information to Mr. VanPatten when he asked you?

09:37:35 **A.** No.

09:37:36 **Q.** Mr. Mensch, do you recall ever going to a junkyard
09:37:45 to purchase any type of drugs, marijuana?

09:37:49 MR. MOODY: Objection, Judge, relevance to a
09:37:51 junkyard and foundation, which junkyard when.

09:37:55 THE COURT: I think it's a foundational
09:37:57 question. I'll allow it.

09:37:59 **A.** There was some type of junkyard over on I believe it
09:38:04 was either Paradise or Lot 10 Road, somewhere in that area.

09:38:07 THE COURT: Did you say Lot 10 Road?

09:38:08 THE WITNESS: Lot 10 Road.

09:38:10 THE COURT: Thank you.

09:38:10 **Q.** And do you recall what year that was?

09:38:11 **A.** Again, ninety-three, ninety-four at the latest.

09:38:17 MS. PEEBLES: No further questions.

09:38:22 MS. BIANCO: Wait a minute, Judge.

09:38:25 (Whereupon, there was a pause in the

09:38:31 proceeding.)

09:38:31 MS. PEEBLES: Judge, I do think I need to make an offer of proof in connection with what I wanted to elicit regarding what VanPatten told Mr. Mensch.

09:38:39 THE COURT: Okay.

09:38:40 MS. PEEBLES: It's my understanding if Mr. Mensch were permitted to answer that question, the testimony would be that Mr. -- or investigator or Deputy VanPatten disclosed to him that he had a female CI that he was working with in New Haven and they were getting ready to do a bust and then wham, Heidi Allen went missing.

09:39:00 THE COURT: You are in fact offering that for the truth of the matter asserted that she is a CI.

09:39:05 MS. PEEBLES: No. I'm offering it as -- no, Judge, because I'll have -- Deputy Vanpattern is scheduled to testify for the prosecution.

09:39:11 THE COURT: Then you can have VanPatten to testify to that.

09:39:14 MS. PEEBLES: But I'm offering it to show the effect of the listener. We have Mr. Mensch here who he asked and requested information from. Additionally, Your Honor, it goes directly to what Mr. Mensch believed regarding Heidi Allen or a female as a CI. In addition, he put it together after she became abducted

09:39:33 and believed it to be --

09:39:34 THE COURT: So again, you're offering if for
09:39:36 the truth of the matter asserted that young Ms. Allen
09:39:40 was a CI.

09:39:40 MS. PEEBLES: Just with what he -- just what
09:39:41 the effect was on him in terms of his belief during
09:39:44 that time period.

09:39:44 THE COURT: Mr. Moody.

09:39:45 MR. MOODY: My first problem would be what is
09:39:47 the relevance of the impact on Mr. Mensch? I mean what
09:39:51 Mr. VanPatten or Deputy VanPatten or Investigator
09:39:56 VanPatten said to him. Mr. Mensch's reaction is
09:39:59 irrelevant. It has to be being offered for the truth
09:40:02 because otherwise his -- his reaction is irrelevant to
09:40:06 any kind of issue in this case. Additionally, Judge,
09:40:09 what we don't -- if the offer of proof is correct, it
09:40:11 is a female CI in New Haven, that could be any number
09:40:15 of females in New Haven. I mean it -- assuming that,
09:40:19 you know, that leap from that to Heidi Allen is -- is
09:40:24 speculative at best.

09:40:25 THE COURT: With all due respect, Ms. Peebles,
09:40:27 I say it has nothing more than offering information
09:40:29 that VanPatten, Investigator VanPatten offered this
09:40:32 gentleman the name of a confidential informant. You're
09:40:35 trying to use it to establish that that young lady was

09:40:37 a CI. You have the right when you cross-examine Mr.
09:40:39 VanPatten to ask this line of questioning. I'm going
09:40:41 to sustain it. Continue to sustain the objection.

09:40:43 MS. PEEBLES: Judge, again, and just I want to
09:40:45 add to my argument.

09:40:46 THE COURT: Sure.

09:40:46 MS. PEEBLES: So it's on the record. I think
09:40:49 the importance of eliciting this information is not
09:40:52 whether or not Heidi Allen was a CI through this
09:40:54 particular witness, that's not what I'm trying to show,
09:40:57 it's the mere fact that he's making these statements
09:40:59 out to other people and disclosing this information.
09:41:03 Whether it's true or not is not what I'm eliciting it
09:41:06 for. I'm not trying to say through Mr. Mensch that she
09:41:09 in fact was a confidential informant, that is Heidi
09:41:12 Allen.

09:41:12 THE COURT: And with all due respect to you, I
09:41:15 disagree that this does not fall within the hearsay --
09:41:18 this is hearsay.

09:41:19 MS. PEEBLES: Thank you. I have no further
09:41:20 questions.

09:41:21 THE COURT: Thank you.

CROSS-EXAMINATION

09:41:32 BY MR. MOODY:

09:41:32 **Q.** Good morning, Mr. Mensch.

09:41:34 **A.** Good morning.

09:41:35 **Q.** Back on the twenty-sixth of January, about ten days ago or so, you spoke with Investigator Bucher and Investigator Pietroski, do you remember that?

09:41:47 **A.** Yes.

09:41:47 **Q.** At your house on Sparhawk Road?

09:41:49 **A.** Yes.

09:41:49 **Q.** And one of the things they discussed with you that came up was when you lived on Rice Road, do you remember that?

09:41:55 **A.** Yes.

09:41:55 **Q.** And one of the ways you related to when you had lived on Rice Road is when -- you have -- how many children do you have?

09:42:02 **A.** Three.

09:42:03 **Q.** Three? And how old is your oldest child?

09:42:07 **A.** Eighteen. She'll be nineteen in May.

09:42:10 **Q.** And one of the ways you related to when you lived on -- on Rice Road was the birth of your oldest child, is that accurate?

09:42:19 **A.** Yes.

09:42:19 **Q.** And you had -- and among the other places you lived, and I may pronounce the name wrong, but well, you lived in Pulaski in a studio apartment, is that accurate?

09:42:30 **A.** Yes.

09:42:30 **Q.** And that was before she was born?

09:42:32 **A.** Yes.

09:42:33 **Q.** And you also lived in -- in -- with a gentlemen, I may pronounce the name wrong, but Koegel (ph) or Koogle (ph)?

09:42:42 **A.** Something like that, yes.

09:42:43 **Q.** And that was before you moved into the residence in Pulaski, is that accurate?

09:42:48 **A.** Yes.

09:42:48 **Q.** And at some point during that period of time while -- and I guess -- is it your wife or your girlfriend was pregnant, you went back to Sparhawk Road?

09:42:58 **A.** Yep.

09:42:58 **Q.** And you told them at that point in time that you had lived -- you -- to the best of your recollection, you had lived on Rice Road in late ninety-four, early ninety-five.

09:43:12 **A.** Um hum.

09:43:12 **Q.** Okay, you told us today it was ninety-two or ninety-three, or excuse me, ninety-three or ninety-four.

09:43:16 **A.** Ninety-three or ninety-four.

09:43:18 **Q.** Okay.

09:43:19 **Q.** Do you have an exact recollection of when you lived there?

09:43:22 **A.** Yep. My roommate at the time left for North Carolina in the fall-ish time, late summer, fall of

09:43:31 ninety-four, and I believe I lived in the Rice Road
09:43:38 apartment, it was either late ninety-three or early winter
09:43:42 of ninety-four, and it was for less than a month. It
09:43:47 was -- I got kicked out of my other apartment, and Debbie
09:43:52 let me and my roommate stay there until we found another
09:43:55 place to live.

09:43:56 **Q.** Now you also said on direct that you knew Roger
09:43:59 Breckenridge, right?

09:44:00 **A.** Yes.

09:44:01 **Q.** And you also know Jen Wescott, is that accurate?

09:44:03 **A.** No, I don't know her. I don't recall meeting her
09:44:08 or -- I somewhat know who she is but I don't know her.

09:44:13 **Q.** Well, okay, you said you some -- you -- maybe I'm
09:44:18 confused. Did you -- have you met her?

09:44:20 **A.** No.

09:44:20 **Q.** Okay, well, when you talked to Investigator Bucher
09:44:23 and Investigator Pietroski, you indicated that you did know
09:44:26 her did you not?

09:44:28 MS. PEEBLES: Outside the scope of direct,
09:44:30 Judge.

09:44:30 THE COURT: He knows Roger Breckenridge and
09:44:32 Roger Breckenridge is tied into Jennifer Wescott.

09:44:38 **Q.** Do you recall telling them that you knew her?

09:44:40 **A.** No, I don't.

09:44:40 **Q.** Well, you described her I believe as a -- as -- the

09:44:47 direct quote was "a party whore." You described her, a
09:44:51 woman named Shaw, and Tonya Priest all.

09:44:54 **A.** Um hum.

09:44:54 **Q.** Do you remember that?

09:44:55 **A.** Somewhat now, yes.

09:44:56 **Q.** Okay, so you did know Jennifer?

09:44:58 **A.** No.

09:44:59 **Q.** Why would you describe her that way if you didn't
09:45:01 know her?

09:45:02 **A.** Reputation.

09:45:05 **Q.** So you were basing all of this on a reputation?

09:45:11 **A.** Based on all of what?

09:45:14 **Q.** Well, all -- your description of her on reputation.

09:45:18 **A.** Yeah.

09:45:19 **Q.** Now, would that same -- did you know Megan Shaw?

09:45:24 **A.** No.

09:45:24 **Q.** So you describe her on reputation as well.

09:45:28 **A.** Um hum.

09:45:29 **Q.** You know Tonya Priest, right?

09:45:30 **A.** Yes.

09:45:31 **Q.** So your description of her is not based on her
09:45:33 reputation.

09:45:34 **A.** Right. Well, no, it's based on her reputation too,
09:45:37 but I just happen to personally know her.

09:45:40 **Q.** Now, you indicated that you -- that you knew -- you

09:45:57 did know Roger Breckenridge and that you at some point had
09:46:03 bought marijuana from him, is that accurate?

09:46:06 **A.** Yes.

09:46:07 **Q.** Now if Roger Breckenridge had lived on Rice Road,
09:46:10 you would have known that, right?

09:46:11 **A.** No.

09:46:12 **Q.** You told Investigator Bucher did you not in the
09:46:15 recorded interview that if he had lived there you would
09:46:18 have known it, right?

09:46:20 **A.** I can't remember what I said.

09:46:24 **Q.** If I were to play you the CD, would that refresh
09:46:27 your recollection?

09:46:28 **A.** Probably would. I'm not denying that I didn't say
09:46:31 it, obviously it's -- you're saying it was on the record.
09:46:34 I just do not remember every word that I said to the
09:46:38 investigators.

09:46:39 **Q.** Now you indicated that you -- you had bought
09:46:45 marijuana from Roger Breckenridge, and you also bought --
09:46:50 had bought marijuana from James Steen?

09:46:53 **A.** Yes.

09:46:53 **Q.** And you had bought marijuana from Michael Bohrer, is
09:46:57 that accurate?

09:46:57 **A.** Yes.

09:46:57 **Q.** Are those the only three people you ever bought
09:47:01 marijuana from? I'm not asking for names, just generally.

09:47:05 A. No.

09:47:07 Q. Okay, and when you were --

09:47:16 MR. OAKES: Your Honor, if I may, if the witness has any concerns about implicating himself regarding the purchase of marijuana, if there is any concerns, we're not interested in prosecuting that. I just -- there seems to be some reluctance there so I just wanted to put that out there so he can answer freely.

09:47:31 THE COURT: You're not going to be prosecuted, I didn't think that you would, so thank you.

09:47:37 Q. Now you said you worked at Champs?

09:47:40 A. Yes.

09:47:41 Q. And who owned Champs at the time that you worked there?

09:47:44 A. Leo Richardson.

09:47:45 Q. And Mr. Richardson was a former -- an Oswego County Sheriff's deputy, is that accurate?

09:47:51 A. Yes.

09:47:52 Q. So he would have known investigator, or excuse me, Chris VanPatten, is that accurate?

09:47:55 A. Couldn't tell you.

09:47:57 Q. Now, when you -- you said that you worked with Mr. VanPatten, Deputy VanPatten at Easy Truck Stop, is that accurate?

09:48:07 **A.** Yes.

09:48:07 **Q.** And that was from when to when?

09:48:09 **A.** Sixteen, when I was sixteen and when I was seventeen.

09:48:14 **Q.** Okay, so what years would that be? I apologize.

09:48:17 **A.** Eighty-eight to eighty-nine, eighty-eight and eighty-nine.

09:48:24 **Q.** Okay, and did VanPatten work there the whole time?

09:48:29 **A.** Yes.

09:48:30 **Q.** And when was the last time you saw Deputy VanPatten, Investigator VanPatten?

09:48:37 **A.** When I was working at the truck stop with him or in general?

09:48:40 **Q.** No, just the last time you saw him.

09:48:43 **A.** Ninety -- in the nineties, mid-nineties.

09:48:50 **Q.** And you -- now you're familiar with an individual by the name of Darron Vecchio?

09:49:25 **A.** Yes.

09:49:25 **Q.** And you were familiar with the structure that he built on Rice Road?

09:49:33 **A.** Yes.

09:49:33 **Q.** And you described it I believe as a fort, is that accurate?

09:49:37 **A.** It's a fort, yeah.

09:49:38 **Q.** And it was -- and you had been inside that?

09:49:43 MS. PEEBLES: Judge --

09:49:43 THE COURT: Hold on. Ms. Peebles.

09:49:45 MS. PEEBLES: I would ask to strike that. He
09:49:47 didn't ask him a question about, he just testified
09:49:49 before he even laid a foundation as to what he ever
09:49:53 referred. He never said it was a fort, that was his --

09:49:55 THE COURT: Can you lay some foundation, Mr.
09:49:57 Moody?

09:49:57 **Q.** You have been to that structure?

09:49:59 **A.** Yes.

09:49:59 **Q.** How would you describe it?

09:50:02 **A.** As a kid's fort.

09:50:04 **Q.** Now you -- you said that you were familiar with Mr.
09:50:09 Vecchio. When approximately did he build it if you know?

09:50:13 **A.** Early nineties.

09:50:15 **Q.** When he was about how old?

09:50:17 **A.** Fourteen or fifteen maybe.

09:50:18 **Q.** And you said at some point in time you went there,
09:50:24 is that accurate?

09:50:24 **A.** Um hum.

09:50:25 **Q.** And there was a fire pit there I believe?

09:50:27 **A.** I believe so, yes.

09:50:29 **Q.** And at some point while you were on the fire
09:50:33 department, I believe you responded to a call of someone
09:50:35 getting burned at that fire pit?

09:50:37 MS. PEEBLES: Judge, I'm going to object.
09:50:38 It's way beyond the scope.

09:50:40 THE COURT: That's way beyond the scope.

09:50:42 MS. PEEBLES: Yeah.

09:50:43 THE COURT: Sustained.

09:50:45 **Q.** Did that -- did that fort ever have a wood stove in
09:50:51 it?

09:50:51 **A.** Not that I was --

09:50:52 MS. PEEBLES: Judge, again, I'm going to
09:50:54 object. This is all beyond the scope.

09:50:56 MR. MOODY: I'll make him my witness for this
09:50:58 point, that's fine.

09:51:00 THE COURT: How are you going to do that?

09:51:03 MR. MOODY: I'll just ask him non-leading
09:51:05 questions.

09:51:05 THE COURT: It's still beyond the scope. You
09:51:07 can call him back as your witness if you want.
09:51:09 Sustained.

09:51:10 **Q.** When did you live at -- in the studio apartment in
09:51:33 Pulaski?

09:51:36 **A.** Ninety-five.

09:51:44 **Q.** December of ninety-five, May of ninety-five, January
09:51:48 of ninety-five?

09:51:49 **A.** Ninety-five. Pretty much the whole year.

09:51:53 **Q.** And where did you live immediately prior to moving

09:51:54 into the studio apartment in Pulaski?

09:51:58 **A.** Koegel house.

09:52:04 **Q.** Do you know how to spell his last name?

09:52:05 **A.** No, I don't remember.

09:52:05 **Q.** And that's on Route 11?

09:52:06 **A.** On Route 11.

09:52:07 **Q.** Parish or Mexico?

09:52:09 **A.** I don't even actually know what town it would be.

09:52:12 **Q.** And where did you live immediately prior to that?

09:52:15 **A.** My car.

09:52:19 **Q.** And how long did you live in Koegel's house?

09:52:23 **A.** A couple of months.

09:52:26 **Q.** How long did you live in the studio apartment in
09:52:28 Pulaski?

09:52:28 **A.** Probably eight months.

09:52:30 **Q.** And the apartment in Bengal Road that you said that
09:52:39 you lived in, was that when this gentleman went to North
09:52:43 Carolina?

09:52:43 **A.** Yes.

09:52:43 **Q.** And what's his name?

09:52:44 **A.** Do I have to say? I mean why?

09:52:47 **Q.** Is it a secret?

09:52:50 **A.** Why do I -- what's the relevance?

09:52:53 THE COURT: Hold on, hold on. Don't argue.
09:52:55 Don't argue with the lawyer. What's the relevance?

09:52:58 MR. MOODY: Judge, it just would be possible then to confirm -- to speak with that person to confirm when he went to North Carolina or not.

09:53:07 THE COURT: Would you please provide the name?

09:53:10 THE WITNESS: Mike Mizner.

09:53:18 THE COURT: Mike Mizner you said?

09:53:20 THE WITNESS: Mizner.

09:53:22 THE COURT: Mizner.

09:53:25 MR. MOODY: I have nothing further, Judge.

09:53:27 MS. PEEBLES: No further questions, Judge.

09:53:28 THE COURT: Sir, you can step down.

09:53:30 THE WITNESS: Thank you.

09:53:31 THE COURT: You're free to go, sir. I'm assuming Ms. Wescott's next?

09:53:41 MS. PEEBLES: Yes.

09:53:42 THE COURT: Let's start her off. Are you anticipating several hours with her? I'm not going to hold you to it, I'm just trying to figure out.

09:53:51 MS. PEEBLES: I really won't be able to gauge it until I see how she responds, Judge.

09:53:56 THE COURT: So we may have to break halfway through her.

09:53:58 MS. PEEBLES: Yes, that would be fine.

09:54:00 THE COURT: I just want to make sure it's all right with you.

09:54:02 MS. PEEBLES: Yeah.

10:00:46 THE COURT: She's here with her attorney, so if you want to call her now.

10:00:49 MS. PEEBLES: Yes, Judge. Call Jennifer Wescott.

10:00:56 THE CLERK: Please stand. Raise your right hand, put your left on the Bible.

10:01:15 JENNIFER WESCOTT, Called as a witness, having been duly sworn, was examined and testified as follows:

10:01:16 THE CLERK: Please state your name for the record.

10:01:24 THE WITNESS: Jennifer Wescott.

10:01:26 THE CLERK: Spell your last name.

10:01:27 THE WITNESS: W-E-S-C-O-T-T.

10:01:31 THE COURT: Ms. Wescott, before you start testifying, I'm going to ask do you consent to having your testimony audio and videotaped?

10:01:37 THE WITNESS: No.

10:01:37 THE COURT: Thank you.

10:01:39 MR. OAKES: Your Honor, before Ms. Peebles begins, I would just like to state we still have the standing objection that we've had.

10:01:46 THE COURT: I understand. You understand that too, right, Ms. Peebles?

10:01:48 MS. PEEBLES: Yes, Judge.

10:01:49 THE COURT: Standing objection regarding the hearsay issue.

10:01:51 MS. PEEBLES: Yes.

10:01:52 DIRECT EXAMINATION

10:01:53 BY MS. PEEBLES:

10:01:54 **Q.** Ms. Wescott, you don't know the Thibodeaus, correct?

10:01:56 **A.** No.

10:01:57 **Q.** Can you speak up? I can't hear you.

10:02:00 **A.** No.

10:02:01 **Q.** You've never met them.

10:02:03 **A.** No.

10:02:04 **Q.** Have you been following the media coverage of this hearing?

10:02:10 **A.** Some.

10:02:10 **Q.** What -- what exactly have you been watching?

10:02:14 **A.** Post-Standard.

10:02:16 **Q.** Now, how many statements have you given to the police since March of 2013?

10:02:23 **A.** Two.

10:02:25 **Q.** How many times have you been interviewed in connection with the investigation of Heidi Allen?

10:02:34 **A.** I got to think about it.

10:02:47 **Q.** That's okay, take your time.

10:02:51 THE COURT: Do you mean by the police or do you mean by people in general?

10:02:54 MS. PEEBLES: No, by investigators from the Oswego County Sheriff's Department.

10:02:57 THE COURT: Thank you.

10:02:58 **A.** Since when?

10:02:59 **Q.** Since March of 2013.

10:03:02 **A.** Twice.

10:03:05 **Q.** Now, have you acknowledged lying to the police in connection with your interviews during their investigation of Heidi Allen?

10:03:22 **A.** I'm sorry, could you repeat that?

10:03:24 **Q.** Have you acknowledged lying to the investigators in connection with the Heidi Allen case?

10:03:30 **A.** Do I acknowledge?

10:03:31 **Q.** Yes.

10:03:32 **A.** Lying to the police?

10:03:33 **Q.** Yes.

10:03:34 **A.** I don't even know how to answer that question. I don't understand that question.

10:03:47 **Q.** Did you lie to the police when they questioned you and you signed a statement in connection with the disappearance of Heidi Allen?

10:03:54 **A.** No.

10:03:55 **Q.** You did not.

10:03:56 **A.** Not in my statements.

10:04:00 **Q.** I'm going to ask you some questions about those

10:04:10 statements. Were you told by anyone from the District
10:04:15 Attorney's Office that you would not be prosecuted for
10:04:18 providing a false statement?

10:04:20 **A.** Is there any way I could get a copy of my statements
10:04:23 so I could refresh my memory on that?

10:04:25 **Q.** Sure.

10:04:26 THE COURT: Which statement are you talking
10:04:28 about, first or second?

10:04:29 MS. PEEBLES: Well, I'll give both of them --
10:04:31 I'll give you both statements to look at.

10:04:32 MR. OAKES: Your Honor, if I may, when we met
10:04:36 with Mr. Conners, counsel, myself, the Court in
10:04:40 chambers a couple weeks ago, again, we had advised
10:04:43 counsel, Mr. Conners, who is counsel for the witness,
10:04:46 that she would not be prosecuted for any false
10:04:49 statements from January of 2013 coming forward because
10:04:52 we wanted her to be able to talk freely, give open and
10:04:56 honest testimony, and again, I acknowledged Mr. Conners
10:04:59 again this morning.

10:05:00 THE COURT: I understand that, but I think
10:05:02 what Ms. Peebles is specifically looking for is prior
10:05:04 to that meeting with Mr. Conners and us. It was
10:05:07 whether or not there was some type of immunity or
10:05:10 non-prosecution backward statements given, is that
10:05:14 correct?

10:05:14 MS. PEEBLES: That is, Judge.

10:05:16 MR. OAKES: Okay.

10:05:18 **Q.** I'm going to hand you what's been marked as Defense
10:05:22 Exhibit 36 and Defense Exhibit 133 and ask you to take a
10:05:25 look at those, review them to yourself, and see if that
10:05:28 helps refresh your recollection.

10:05:34 (Whereupon, there was a pause in the
10:06:12 proceeding.)

10:06:12 **A.** Okay. What was the question?

10:06:13 **Q.** The question was were you concerned after you gave
10:06:18 those statements about being prosecuted for providing a
10:06:20 false statement to the investigators?

10:06:22 **A.** No.

10:06:23 **Q.** Did you ever make a statement to anyone voicing
10:06:27 concerns that you could be prosecuted for providing a false
10:06:29 statement?

10:06:29 **A.** No.

10:06:30 **Q.** Are those two statements the same?

10:06:32 **A.** They're just about the same, yes.

10:06:39 **Q.** When did you meet Roger Breckenridge?

10:06:41 **A.** I met Roger Breckenridge in the middle of 1994.

10:06:45 **Q.** Now, when you gave your original statement to police
10:06:48 investigators after you met with Investigator Pietroski in
10:06:53 March of 2013, you told him that you had Easter dinner with
10:06:59 Roger Breckenridge the morning Heidi Allen went missing, is

10:07:03 that correct?

10:07:03 **A.** I was confused on my year, but I don't believe that it's in the statement that I was eighteen with Roger.

10:07:10 **Q.** Did you ever deny knowing Roger on the morning Heidi Allen was abducted in your first statement and your first sworn statement to Investigator Pietroski?

10:07:42 (Whereupon, there was a pause in the proceeding.)

10:07:54 **A.** No. She tells me I know Roger.

10:07:59 **Q.** Did you say in that sworn statement, did you deny knowing Roger Breckenridge on the morning Heidi Allen was abducted. That's my question.

10:08:07 **A.** Yes, I did, deny knowing Roger Breckenridge in this statement.

10:08:12 **Q.** Point to me during that statement where you deny knowing Roger Breckenridge on the morning Heidi Allen was abducted.

10:08:26 (Whereupon, there was a pause in the proceeding.)

10:09:01 THE COURT: Whose cell phone is that? Whose cell phone? Cell phones off.

10:09:06 UNIDENTIFIED PERSON: Sorry.

10:09:07 THE COURT: That's all right. Thank you. Just keep it off.

10:09:25 **A.** Can you repeat the question please?

10:09:28 **Q.** Is there anywhere in your first sworn statement where you deny knowing Roger Breckenridge in 1994 when Heidi Allen was abducted, anywhere in that statement do you say I didn't know Roger Breckenridge then?

10:09:56 (Whereupon, there was a pause in the proceeding.)

10:10:05 **A.** No.

10:10:07 **Q.** In fact, you say you didn't know Michael Bohrer until 2007, that's what you said in your sworn statement, right?

10:10:14 **A.** Yes.

10:10:15 **Q.** Now, between the first statement that you gave and the second statement that you gave, did you receive a message from Roger Breckenridge through Emmie West?

10:10:27 **A.** Yes.

10:10:28 **Q.** Please tell me what that message was.

10:10:31 **A.** It was a message that said please keep your mouth shut in regards to Roger and the Heidi Allen case.

10:10:45 **Q.** Was there an expletive that was used when that message was conveyed to you?

10:10:49 **A.** I'm sure the F bomb was there.

10:10:53 THE COURT: Hold it. Can we -- with regard to the answer was she allegedly heard this through Emmie who?

10:10:59 MS. PEEBLES: Emmie West.

10:11:01 THE COURT: Okay.

10:11:01 MS. PEEBLES: I'll ask her about that.

10:11:02 THE COURT: No, I understand that, but how is
10:11:05 any of that in any way -- there's a standing objection.
10:11:10 That's two layers of hearsay, that's not a single layer
10:11:14 of hearsay.

10:11:15 MS. PEEBLES: Well, Your Honor, it definitely
10:11:16 goes to the impact that it had on Ms. Wescott.

10:11:19 THE COURT: And that's it then?

10:11:20 MS. PEEBLES: Yes, that's absolutely it.

10:11:21 THE COURT: Because otherwise there's no way
10:11:23 that fits into a hearsay exception.

10:11:25 MS. PEEBLES: No, I'm just using it for the
10:11:27 impact that it had on Ms. Wescott.

10:11:29 THE COURT: That's fine.

10:11:30 **Q.** Now, did you talk to Roger Breckenridge while he was
10:11:34 in custody after you gave your first statement on March of
10:11:37 2013?

10:11:38 **A.** Yes.

10:11:38 **Q.** And do you recall when that was?

10:11:42 **A.** Around March or April.

10:11:47 **Q.** Of what year?

10:11:48 **A.** 2014.

10:11:50 **Q.** Fourteen or thirteen?

10:11:52 **A.** Fourteen.

10:11:54 **Q.** Prior to March of 2014, had you had any conversations with Roger by telephone after -- in 2013 after you gave that statement?

10:12:03 **A.** No.

10:12:04 **Q.** So the first time you talked to Roger after you give this statement is March of 2014?

10:12:11 **A.** Yes.

10:12:11 **Q.** And when exactly was that message delivered to you by Emmie West?

10:12:17 **A.** I -- before August fourth.

10:12:21 **Q.** Before August fourth of 2014?

10:12:23 **A.** Yes.

10:12:23 **Q.** And when you had a conversation in March of 2014, what was the nature of your conversation with Roger?

10:12:37 **A.** What do you mean the nature?

10:12:39 **Q.** Did you talk about the Heidi Allen case?

10:12:41 **A.** No. Very short.

10:12:43 **Q.** Very short --

10:12:45 **A.** Conversation.

10:12:46 **Q.** Okay, and what was the nature of the conversation?

10:12:48 **A.** He wanted me to bring the kids to see him.

10:12:50 **Q.** And he wanted you to make a personal visit to the prison where he was?

10:12:54 **A.** Yes.

10:12:54 **Q.** Did you do that?

10:12:56 **A.** No.

10:12:57 **Q.** Was that the only conversation that you had with Roger by telephone?

10:13:04 **A.** That's --

10:13:05 **Q.** The one and only?

10:13:07 **A.** Yes.

10:13:07 **Q.** And was it to your cell phone or was it to somebody else's cell phone?

10:13:11 **A.** It was somebody else's house phone.

10:13:15 **Q.** And who was the somebody else?

10:13:17 **A.** A friend from Cicero, Tina.

10:13:20 **Q.** Now, did you believe that the county was going to try to protect you in connection with the Heidi Allen investigation?

10:13:37 **A.** No.

10:13:39 MR. OAKES: Objection, Your Honor. What point in time are we talking about?

10:13:42 THE COURT: Can we have a reference point? Prior to Exhibit 36, after Exhibit 36, prior to Exhibit 133.

10:13:51 MS. PEEBLES: After Exhibit 133.

10:13:53 THE COURT: Which would have been the second statement?

10:13:54 MS. PEEBLES: Would have been the second statement.

10:13:56 **A.** You're going to have to start that all over again.
10:13:58 **Q.** Did you believe that the county was going to protect
10:14:01 you in connection with the Heidi Allen investigation after
10:14:04 you gave your second statement?
10:14:05 **A.** No.
10:14:06 **Q.** Do you recall being scheduled for a polygraph
10:14:11 examination?
10:14:12 **A.** Yes.
10:14:13 **Q.** Do you recall filling out a truthfulness survey
10:14:17 before you took a polygraph examination?
10:14:21 MR. OAKES: Objection, Your Honor, relevance.
10:14:22 THE COURT: Polygraphs are absolutely not
10:14:24 admissible. What's the relevance of that, Ms. Peebles?
10:14:28 MS. PEEBLES: Your Honor, there's a survey
10:14:30 that she took. I'm just going to question her about
10:14:33 the survey and the answers that she put down on the
10:14:34 survey.
10:14:35 THE COURT: What you want to do, but why is it
10:14:37 relevant?
10:14:38 MS. PEEBLES: I'm not offering the polygraph.
10:14:40 THE COURT: I understand that. Why's the
10:14:41 survey -- why's the survey relevant?
10:14:44 MS. PEEBLES: Because Ms. Wescott had
10:14:45 indicated on her survey that she's a hundred percent
10:14:47 truthful when she's talking with her friends and family

10:14:50 and employers.

10:14:50 THE COURT: So you're trying to impeach your own client, your own witness.

10:14:54 MS. PEEBLES: No, I'm not. I'm trying to bolster her credibility when she speaks to her friends and family.

10:14:59 THE COURT: I'll allow it for that purpose.

10:15:00 **Q.** Ms. Wescott, did you recall filling out a survey before you took your polygraph examination?

10:15:07 **A.** Yes.

10:15:07 **Q.** And do you recall asking percentages about when you're truthful, do you remember that?

10:15:12 **A.** Yes.

10:15:12 **Q.** And you indicated that you were a hundred percent truthful when you're talking to your friends and family?

10:15:19 **A.** Now, yes.

10:15:22 **Q.** And when you're talking with an employer?

10:15:25 **A.** Yes.

10:15:25 **Q.** Now, when you were being questioned, when you were filling out these preliminary forms, didn't you tell the polygraph examiner that the county was going to protect you?

10:15:39 **A.** I don't remember.

10:15:42 **Q.** When is the last time you spoke with anybody from the Oswego County Sheriff's Department?

10:15:54 **A.** August fourth, 2014.

10:15:59 **Q.** Well, when was your polygraph exam scheduled?

10:16:02 **A.** It was August eleventh, but I didn't speak to anyone from the Sheriff's Department.

10:16:06 **Q.** Where -- where did you go for the exam?

10:16:09 **A.** Fulton Police Department.

10:16:11 **Q.** And you didn't talk with Investigator Pietroski?

10:16:14 **A.** Not once that day.

10:16:16 **Q.** Now in addition to meeting with investigators, didn't you meet with Mr. Oakes at Sal Lanza's office?

10:16:24 **A.** Yes.

10:16:25 **Q.** When was that?

10:16:25 **A.** I don't remember the exact day.

10:16:28 **Q.** Was it before the August fourth of 2014 interview?

10:16:32 **A.** Yes.

10:16:33 **Q.** And who was present during that meeting?

10:16:37 MR. OAKES: Objection, Your Honor, relevance.

10:16:38 THE COURT: I'll allow it.

10:16:41 **A.** Myself, Sal Lanza, Gregory Oakes and Kathy MacPherson.

10:16:48 **Q.** And during that meeting that you had were -- was there a request to grant you immunity through your attorney?

10:17:00 **A.** No.

10:17:02 **Q.** Were you told whether you would be prosecuted for

10:17:04 providing a false statement?
10:17:06 **A.** No.
10:17:06 **Q.** Was that raised at all during the course of your
10:17:09 meeting?
A. No.
10:17:12 **Q.** Can you speak up please?
10:17:14 **A.** No.
10:17:15 **Q.** Did you listen to the audio recording between you
10:17:19 and Tonya Priest at that meeting at your lawyer's office?
10:17:22 **A.** Yes.
10:17:23 **Q.** Before I ask you questions about that recording, I
10:17:30 want to ask you during your August fourth of 2014
10:17:37 interview, when you went to the Sheriff's Department and
10:17:40 were re-interviewed for the second time, who interviewed
10:17:43 you?
10:17:44 **A.** Carmen and Oakes. I'm sorry, I can't remember his
10:17:49 name.
10:17:49 **Q.** Investigator Rojek?
10:17:51 **A.** Yes.
10:17:51 **Q.** And the district attorney, Mr. Oakes?
10:17:53 **A.** Yes.
10:17:54 **Q.** Now during that interview, you told them that you
10:18:01 didn't even know Roger Breckenridge until after Heidi Allen
10:18:04 was abducted?
10:18:05 **A.** Yes.

10:18:06 MR. OAKES: Objection, Your Honor.

10:18:07 THE COURT: What, Mr. Oakes?

10:18:08 MR. OAKES: I try to give Ms. Peebles some 10:18:10 leeway but there's an awful lot of leading questions 10:18:12 for her own witness.

10:18:14 THE COURT: I'll sustain it. There are a lot 10:18:16 of leading questions, Ms. Peebles. Can you remember 10:18:18 you're not crossing here, you're directing?

10:18:20 MS. PEEBLES: Yes, Judge.

10:18:21 THE COURT: Some non-leading questions.

10:18:23 MS. PEEBLES: Yes, Judge.

10:18:24 THE COURT: Thank you.

10:18:24 MS. PEEBLES: Now I don't remember the 10:18:25 question so I can't even ask it in a non-leading way.

10:18:29 THE COURT: You asked if she denied knowing 10:18:31 Roger Breckenridge until after Heidi Allen's 10:18:34 disappearance.

10:18:34 **Q.** What did you tell the investigator about your 10:18:37 relationship with Roger during the August fourth, 2014 10:18:40 interview?

10:18:40 **A.** There was no relationship until February of 10:18:42 ninety-five.

10:18:43 **Q.** All right, you didn't even -- well, did you know 10:18:46 Roger before February of ninety-five, did you tell -- did 10:18:49 you tell them that you knew him before February of

10:18:52 ninety-five?

10:18:53 **A.** I babysat for him.

10:18:54 **Q.** When did you first -- I guess my question is what
10:18:57 did you tell them about your relationship, not a romantic
10:19:01 relationship, but just your relationship with Roger
10:19:04 Breckenridge in the August fourth, 2014 interview?

10:19:08 MR. OAKES: Objection, Your Honor. Counsel's
10:19:11 asking the witness what she said at various points in
10:19:14 time is her attempt to impeach her own witness. It
10:19:19 seems the more appropriate route would be to ask her a
10:19:23 question, let her answer the question, and if it's
10:19:24 inconsistent with a prior statement, then impeach her
10:19:26 rather than trying to impeach her to begin with.

10:19:28 MS. PEEBLES: I'm asking her what she said. I
10:19:30 can't impeach her until I hear what her response is.

10:19:33 THE COURT: I'll allow the question but you
10:19:36 know you have limitations regarding being able to
10:19:38 impeach your own witness.

10:19:40 MS. PEEBLES: Right, and it has to be with a
10:19:41 sworn statement.

10:19:42 THE COURT: Has to be with a sworn statement,
10:19:43 that's it.

10:19:44 MS. PEEBLES: Right. Got it.

10:19:45 **A.** So what was the question again?

10:19:46 **Q.** The question is what did you tell Investigator Rojek

10:19:50 and the District Attorney Oakes when you met them in August
10:19:53 of 2014 about when you met Roger Breckenridge for the first
10:19:59 time?

10:19:59 **A.** I told them that I met him in the middle of 1994 and
10:20:03 started babysitting for him and his wife Tracey.

10:20:06 **Q.** In the middle of 1994.

10:20:09 **A.** Yes.

10:20:09 **Q.** Could you be more specific?

10:20:11 **A.** I -- it was after a wedding. I was in the wedding.
10:20:19 Summer, fall. There wasn't snow on the ground.

10:20:24 **Q.** So and you acknowledge that that's different from
10:20:28 what you told Pietroski when he first interviewed you when
10:20:32 you gave a sworn statement back in March of 2013?

10:20:35 MR. OAKES: Actually, Your Honor, I'm going to
10:20:37 object because in the sworn statement it doesn't
10:20:40 reference when she met Roger.

10:20:42 THE COURT: Would that be Exhibit 36 or
10:20:44 Exhibit 133?

10:20:45 MS. PEEBLES: No. We already went through
10:20:46 this, Judge, in terms of what she said. She never said
10:20:48 she didn't know Roger before Heidi Allen was abducted
10:20:51 in her first sworn statement.

10:20:53 MR. OAKES: There is a difference between not
10:20:54 saying something and saying something contrary, and if
10:20:57 she had said in that statement that I met Roger in

10:20:59 ninety-three, that would be contrary. It just isn't
10:21:02 addressed in that first statement when she met Roger so
10:21:05 it can't be inconsistent.

10:21:07 THE COURT: Not mentioned, right? Not
10:21:10 inconsistent. It can't be inconsistent by omission.

10:21:13 MS. PEEBLES: Well, Judge, what's inconsistent
10:21:15 about it is the fact that she told Investigator
10:21:18 Pietroski that she had Easter dinner on the morning of
10:21:20 Easter Sunday when Heidi Allen went missing.

10:21:24 THE COURT: That's Exhibit 36.

10:21:26 MR. OAKES: That's -- that's in the March
10:21:28 seventh, 2013 written statement.

10:21:31 MS. PEEBLES: That's what she told
10:21:32 Investigator Pietroski.

10:21:34 THE COURT: Is that in the written statement?

10:21:36 MS. PEEBLES: That language, no, but --

10:21:37 THE COURT: Sustained.

10:21:38 **Q.** You --

10:21:38 THE COURT: Sustained.

10:21:39 **Q.** You did say that you didn't know Michael Bohrer
10:21:41 until 2007.

10:21:43 **A.** That's when I met Michael Bohrer.

10:21:46 **Q.** And when you were first -- when you were interviewed
10:21:51 with Pietroski, did you offer an alibi for Roger when you
10:21:55 were interviewed by him in March of 2013?

10:22:00 **A.** I don't remember the --

10:22:02 MR. OAKES: Objection, Your Honor, first as to
10:22:05 the characterization of alibi.

10:22:08 THE COURT: I think everybody knows what an
10:22:10 alibi is, Mr. Oakes. You can answer the question.

10:22:12 **A.** I don't -- I don't really remember the interview.

10:22:17 **Q.** If I play that audio recording for you, would that
10:22:20 help refresh your recollection?

10:22:21 **A.** Yes, it would.

10:22:22 MS. PEEBLES: I'd like to queue it up.

10:22:27 MR. OAKES: Your Honor, I'm going to object
10:22:31 because again, it seems as if she's trying to get into
10:22:34 what she said in a particular point in time in March of
10:22:36 2013 without first asking the witness whether she was
10:22:41 even with Roger at that time and addressing that issue.

10:22:46 MS. PEEBLES: Judge --

10:22:48 THE COURT: Go ahead.

10:22:49 MS. PEEBLES: I'm asking her whether she
10:22:50 offered up an alibi. She said she doesn't remember and
10:22:52 I offered to refresh her recollection.

10:22:54 THE COURT: The question is appropriate. She
10:22:57 did say it would refresh her recollection so I -- do
10:23:00 you have it where it's supposed to be?

10:23:03 MS. PEEBLES: I do. I actually have a
10:23:05 transcript and that might be a little bit faster to do

10:23:08 it that way.

10:23:09 THE COURT: That might be faster. Mark the
10:23:11 transcript.

10:23:12 MS. PEEBLES: I have it marked, Judge, yep.

10:23:14 THE COURT: Okay.

10:23:36 MS. PEEBLES: I think we offered the
10:23:37 transcript and we may have used it as an aid, so let me
10:23:40 check the Court -- I think we did.

10:23:47 THE COURT: Exhibit 26?

10:23:48 MS. PEEBLES: Well, I'll just grab mine.

10:24:00 THE COURT: Ms. Peebles, twenty-six is in.

10:24:03 MS. PEEBLES: Yes. Is it up there?

10:24:10 THE COURT: Yes. It should be in this pile.

10:24:23 MS. PEEBLES: It's actually thirty-two, Judge.

10:24:25 THE COURT: Thirty-two?

10:24:27 MS. PEEBLES: Twenty-six is the phone
10:24:29 conversation. Got it.

10:24:45 THE COURT: Thirty-two, the transcript of the
10:24:47 conversation with Pietroski.

10:24:48 MS. PEEBLES: Exactly.

10:25:33 **Q.** Okay, I'm going to hand you what's been marked as
10:25:35 Defense Exhibit 32, ask you to take a look at the bottom of
10:25:39 page twenty-one and read it to yourself and ask if that
10:25:43 helps refresh your recollection about you gave an alibi for
10:25:46 Roger to Investigator Pietroski. Does that help refresh

10:25:57 your recollection?

10:25:58 **A.** Yes.

10:25:58 **Q.** And did you provide Roger with an alibi when you
10:26:01 spoke with Investigator Pietroski?

10:26:03 **A.** Yes. Under confusion I did.

10:26:05 **Q.** You were confused?

10:26:06 **A.** Yes.

10:26:07 **Q.** Now, Ms. Wescott, I want to ask you some questions
10:26:21 now about a woman by the name of Tonya Priest. Do you know
10:26:28 Tonya Priest?

10:26:29 **A.** Yes.

10:26:30 **Q.** How do you know Tonya Priest?

10:26:33 **A.** I've known her since middle school, just
10:26:36 acquaintances.

10:26:38 **Q.** And did you guys grow up on the same street during a
10:26:41 period of time?

10:26:42 **A.** No.

10:26:42 **Q.** Was she attending Central Square High School when
10:26:47 you were, or elementary school?

10:26:49 **A.** No.

10:26:49 **Q.** Did you see her in school at all?

10:26:51 **A.** No.

10:26:51 **Q.** What contact did you have with her during your
10:26:59 childhood?

10:27:01 **A.** I didn't. I met her through the Rod & Gun Club when

10:27:05 our parents were there shooting their guns and drinking.
10:27:09 **Q.** How old were you? And could you please speak up?
10:27:11 I'm having a hard time hearing you.
10:27:14 **A.** I don't remember the exact age, but I would say
10:27:17 somewhere between probably eight and ten is when I first
10:27:20 met Tonya.
10:27:21 **Q.** And throughout the years, did you have contact with
10:27:30 Tonya Priest at various stages in your life?
10:27:32 **A.** We had minimal contact when we -- when -- like I
10:27:38 said, when my parents were hanging out at the Rod & Gun
10:27:41 Club, but other than that, we didn't contact each other
10:27:43 again until after we had kids.
10:27:45 **Q.** Do you know an individual by the name of Sid Shaw?
10:27:48 **A.** Yes.
10:27:49 **Q.** How do you know Sid Shaw?
10:27:51 **A.** He is related to my children.
10:27:54 **Q.** In what way?
10:27:55 **A.** He's somehow related to Roger.
10:27:59 **Q.** And do you know what Tonya Priest relationship with
10:28:07 Sid Shaw was?
10:28:08 **A.** Yes. She had kids with him.
10:28:10 **Q.** And Sid Shaw's related to Roger Breckenridge?
10:28:16 **A.** That's what I have been told always.
10:28:18 **Q.** Now, when you were with Roger Breckenridge, did you
10:28:24 ever socialize with Sid Shaw and Tonya Priest?

10:28:27 A. When I was with Roger?
10:28:29 Q. Yes.
10:28:29 A. Yes.
10:28:29 Q. And do you remember how often that would happen?
10:28:33 A. Not very often. Only when Sid needed work done on
10:28:37 his car and Roger could do it.
10:28:39 Q. How about Rod West? Who is Rod West?
10:28:46 A. My kids' uncle.
10:28:48 Q. And who is he related to?
10:28:50 A. Roger.
10:28:52 Q. What's their relationship?
10:28:54 A. Brothers.
10:28:56 Q. Did you ever attend family parties at Rod West's
10:28:59 house?
10:29:00 A. Yes.
10:29:04 Q. And typically speaking, how often would there be
10:29:07 parties at Rod West's house?
10:29:09 A. I wouldn't say it was parties, we'd watch football.
10:29:13 Q. How would you describe them?
10:29:15 A. We'd watch football or play cards or they'd be out
10:29:19 working on a truck in the garage or --
10:29:21 Q. And how often were -- would you go to Rod West's
10:29:24 house?
10:29:25 THE COURT: Can I have a time frame?
10:29:27 Q. During the time when you were around Sid Shaw and

10:29:30 Tonya Priest.

10:29:31 **A.** Not very often.

10:29:33 **Q.** Do you know what year approximately that was just so we have a time frame?

10:29:42 **A.** Maybe ninety-nine, two-thousand.

10:29:55 **Q.** Now did you know Vickie West?

10:29:57 **A.** Yes.

10:29:57 **Q.** How did you know Vickie West?

10:29:59 **A.** She was my children's first cousin.

10:30:04 **Q.** And James Steen, did you know James Steen?

10:30:06 **A.** Yes.

10:30:07 **Q.** And how did you know James Steen?

10:30:11 **A.** Met him through the racetrack and we just were friends since then.

10:30:16 **Q.** Now when you were with Roger Breckenridge, were you using any type of narcotics?

10:30:24 **A.** I'm sorry, I didn't hear that.

10:30:26 **Q.** Were you using any type of narcotics?

10:30:28 **A.** What do you mean by narcotics.

10:30:31 **Q.** Drugs. Illegal drugs.

10:30:33 **A.** Yes.

10:30:33 **Q.** And what types of drugs were you using?

10:30:37 **A.** Marijuana and cocaine.

10:30:38 **Q.** When is the last time you ever used marijuana or cocaine?

10:30:49 MR. OAKES: Objection, relevance.

10:30:52 THE COURT: What's -- why is it relevant?
10:30:55 Sustained. It's not relevant.

10:30:56 **Q.** I'm going to ask you some questions now about a
10:30:58 woman named Amanda Braley. Do you know Amanda Braley?

10:31:00 **A.** Yes.

10:31:01 **Q.** How do you know Amanda Braley?

10:31:03 **A.** She was just a friend of the family through another
10:31:09 friend of the family.

10:31:10 **Q.** Did she ever reside with you at your parents' house
10:31:14 in Hastings?

10:31:15 **A.** No.

10:31:16 **Q.** Did she ever reside with your parents in Hastings?

10:31:20 **A.** No.

10:31:21 **Q.** She never stayed at your parents' house in Hastings?

10:31:24 **A.** No, she didn't.

10:31:25 **Q.** Did you know Jen Lumley?

10:31:27 **A.** Yes.

10:31:28 **Q.** And how did you know Jen Lumley?

10:31:30 **A.** She was my sister's girlfriend in ninety-five.

10:31:34 **Q.** Who is your sister?

10:31:35 **A.** Shannon.

10:31:41 **Q.** And how long was she with your sister?

10:31:47 **A.** I don't -- I don't recall how long they were
10:31:50 together.

10:31:51 **Q.** Did Jen Lumley ever live with your parents in Hastings with your sister?

10:31:56 **A.** She stayed in a camper on their property.

10:32:00 **Q.** Did you ever socialize with Amanda Braley at your parents' house?

10:32:07 **A.** Yes.

10:32:08 **Q.** And how often was that? When was that, what year if you remember?

10:32:14 **A.** Had to be 2000, 2000.

10:32:19 **Q.** And were you ever present in front of Amanda Braley when Roger was talking about the disappearance of Heidi Allen?

10:32:34 **A.** No.

10:32:34 **Q.** When is the last time you spoke with either Jen Lumley or Amanda Braley?

10:32:47 **A.** Years.

10:32:47 **Q.** More than ten?

10:32:52 **A.** I haven't -- Amanda Braley I haven't seen since before my mother passed away which was 2003, so yeah, over ten.

10:33:06 **Q.** Now, I want to follow up with some questions about Tonya Priest. Prior to February of 2013, had you connected with Tonya Priest on Facebook?

10:33:17 **A.** Prior to February 2013?

10:33:21 **Q.** Yes.

10:33:22 **A.** Yes.

10:33:24 **Q.** Do you remember when that was?

10:33:26 **A.** I believe it was 2011. 2010 or 2011 we had talked
10:33:35 on Facebook a couple times.

10:33:36 **Q.** And did you reach out to her?

10:33:39 **A.** In regards --

10:33:40 **Q.** Just asking to -- a friend request?

10:33:42 **A.** No. She -- we were -- we were friends on Facebook.
10:33:46 We just never talked.

10:33:48 **Q.** And were you talking in 2010 and 2011?

10:33:52 **A.** Yes. She contacted me and wanted me to get some
10:33:59 junk for her, pick some junk up and take it to the junkyard
10:34:03 for her.

10:34:11 **Q.** Did you write to her on Facebook and tell her you
10:34:14 would love to see her back in October of 2010?

10:34:18 **A.** I don't remember.

10:34:19 **Q.** If I gave you a document that depicted that, would
10:34:24 that help refresh your recollection, the message from
10:34:26 Facebook?

10:34:26 **A.** Yes.

10:34:29 MS. PEEBLES: (Showing to Mr. Oakes).

10:34:37 THE COURT: What's the relevance of 2010
10:34:39 friend request?

10:34:42 MS. PEEBLES: Judge, I'm -- I'll get to it.

10:34:45 THE COURT: Okay. What exhibit is that?

10:34:58 MS. PEEBLES: That is exhibit --

10:35:01 THE WITNESS: Eighty-two.

10:35:02 MS. PEEBLES: Yeah, eighty-two.

10:35:05 **Q.** Does that help refresh your recollection?

10:35:14 **A.** Yes.

10:35:17 **Q.** Now, so you had some communication with Tonya Priest
10:35:22 before she reached out to you in February of 2013?

10:35:26 **A.** Yes.

10:35:27 **Q.** Now I'm going to ask you some questions about when
10:35:35 you connected with Tonya Priest in February of 2013. How
10:35:40 did she reach out to you?

10:35:43 **A.** She sent me a message saying that her ex had blocked
10:35:48 me and she sent me a friend request. She said it was Ruben
10:35:53 I was arguing with.

10:35:54 **Q.** I'm sorry?

10:35:55 **A.** She said it was Ruben I was arguing with, that's
10:35:57 what she called Sid.

10:35:58 **Q.** And you accepted her friend request?

10:36:00 **A.** Yes.

10:36:01 **Q.** And you gave her your phone number?

10:36:09 **A.** I don't remember giving her my phone number. She
10:36:11 gave me hers.

10:36:13 **Q.** Okay, so she gave you her phone number?

10:36:15 **A.** Yes.

10:36:15 **Q.** And were text messages exchanged?

10:36:19 **A.** Yes.

10:36:20 **Q.** And do you remember what day that was when the text
10:36:22 messages were exchanged?

10:36:23 **A.** I don't remember.

10:36:24 **Q.** And the discussion involved the disappearance of
10:36:29 Heidi Allen?

10:36:31 **A.** Which time?

10:36:33 **Q.** The text messages when you were communicating.

10:36:35 **A.** I don't --

10:36:36 MR. OAKES: Objection, Your Honor. I guess
10:36:38 I'm seeking clarification. Are these Facebook messages
10:36:41 or like cellular text messages?

10:36:43 MS. PEEBLES: Text messages.

10:36:45 **A.** Okay, because we were just talking about the
10:36:46 Facebook messages so I was a bit confused.

10:36:49 THE COURT: Text messages.

10:36:50 **Q.** Yes. You said you didn't give your phone number to
10:36:52 her, but she -- you gave her your phone number?

10:36:56 THE COURT: She gave her, Tonya Priest gave
10:36:58 her her phone number.

10:37:00 **Q.** Tonya gave you her phone number.

10:37:02 **A.** Yes, via Facebook, text, Facebook message.

10:37:06 **Q.** And then you were text messaging with the cell
10:37:10 phones.

10:37:10 **A.** Yes.

10:37:10 **Q.** Now, while you're text messaging, and this is February of 2013, or do you need memory refreshed?

10:37:22 **A.** What's the question?

10:37:23 **Q.** The time period when you were exchanging the text messages, after you connected with Tonya Priest on Facebook, you had her phone number, time period February of 2013?

10:37:34 **A.** Yes.

10:37:35 **Q.** Now, you were discussing the disappearance of Heidi Allen?

10:37:39 **A.** Yes.

10:37:40 **Q.** And during that discussion, she told you something and you wanted to follow up on it regarding Sid Shaw?

10:37:55 **A.** She just told me that he was getting out of prison. She was trying to keep her boys.

10:38:00 **Q.** And did you confirm whether Sid Shaw was going to be released from prison?

10:38:05 **A.** I said to her I didn't know he was up for parole until 2015 or 2016 and she said I'm keeping him there till 2016.

10:38:16 **Q.** But when she said that, you went online and checked whether he was actually going to be up for parole?

10:38:21 **A.** Yes.

10:38:22 **Q.** There came a point in time on March second of 2013 that you actually spoke with Tonya Priest.

10:38:43 **A.** On what day?

10:38:44 **Q.** March second of 2013?

10:38:50 **A.** I had spoke with her a couple times.

10:38:54 **Q.** Do you recall speaking with her on March second of 2013?

10:38:59 **A.** I recall speaking with her most of the times I spoke with her. I don't remember what days to be specific that we spoke.

10:39:06 **Q.** How many times did you speak on the phone with Tonya Priest?

10:39:10 **A.** At least twice.

10:39:12 **Q.** And do you recall how long were the conversations that you had with her?

10:39:18 **A.** Oh, the one when my son was at his dance, we talked, I don't even remember how long we talked, but I do recall talking to her, and then the following day was only about fifteen minutes I think.

10:39:33 **Q.** Now, when you had the conversation with her, the second phone conversation with her, I'm going to ask you some questions about what you said during that phone call, okay?

10:39:44 **A.** Yep.

10:39:44 **Q.** Now, you -- you didn't have any idea that your call was being monitored or recorded.

10:39:52 **A.** No.

10:39:53 **Q.** Right? In fact, you thought you were speaking to a
10:40:00 friend of yours, Tonya Priest.

10:40:03 **A.** Yes.

10:40:04 **Q.** And when the -- when the matter of Heidi Allen came
10:40:11 up, you didn't really want to talk about it, is that a fair
10:40:16 statement?

10:40:16 **A.** Yes.

10:40:17 **Q.** You said you dropped that shit from your head ten
10:40:22 years ago and it took you a while to get it gone, right?

10:40:24 **A.** I wasn't -- that wasn't in regards to Heidi Allen.

10:40:28 **Q.** I'm sorry?

10:40:28 **A.** That wasn't in regards to Heidi Allen.

10:40:31 **Q.** What was that in regards to?

10:40:33 **A.** Roger and his lies.

10:40:35 **Q.** Roger and his lies?

10:40:39 **A.** Um hum. I had a bad life with Roger.

10:40:43 **Q.** Well, we're going to get to that. You told Tonya
10:40:49 that it really bothered you to talk about it.

10:40:52 MR. OAKES: Objection, Your Honor.

10:40:53 THE COURT: Where are -- where is this in
10:40:57 reference to --

10:40:58 MS. PEEBLES: We're still on the phone call.

10:41:00 THE COURT: I understand that, I have that in
10:41:00 front of me. I'm trying to find out what page you are
10:41:03 on the phone call.

10:41:04 MS. PEEBLES: I can point to the page, Judge.
10:41:12 The "dropped that shit from her head" is on page two.
10:41:17 THE COURT: Okay.
10:41:17 MS. PEEBLES: And then the "didn't want to
10:41:20 talk about it" is on --
10:41:35 THE WITNESS: I believe it starts at the end
10:41:37 of the conversation.
10:41:37 MS. PEEBLES: Page nine, way down the page.
10:41:47 **Q.** And you didn't want that stuff back in your head.
10:41:50 Is that what you told Tonya?
10:41:52 **A.** Yes.
10:41:52 **Q.** Now, when she asked about what you knew, you said
10:42:10 they brought her to the -- to your house in the van, she
10:42:13 never came in the house, they made her sit in the van. Do
10:42:17 you recall telling her that on the phone?
10:42:18 **A.** Yes.
10:42:18 **Q.** And in reference to why Heidi Allen was abducted,
10:42:34 you said it was because of cocaine?
10:42:38 **A.** I said I did cocaine.
10:42:43 **Q.** When asked why Heidi Allen was abducted, you said,
10:42:47 "I did cocaine?"
10:42:50 **A.** I -- I said a lot of lies to Tonya.
10:42:56 **Q.** I'm sorry?
10:42:57 **A.** I don't -- I don't understand this question. I
10:43:02 don't -- I didn't say anything to Tonya in that statement

10:43:06 in there.

10:43:06 **Q.** I'm sorry?

10:43:07 **A.** I don't -- you'd have to refresh my memory of me 10:43:11 saying that.

10:43:12 **Q.** All right, I can do that. I'm going to hand you 10:43:18 what's been marked as Defense Exhibit 26 and ask you to 10:43:23 take a look at the top of the page and read that to 10:43:26 yourself and tell me if that helps.

10:43:28 THE COURT: What page, Ms. Peebles?

10:43:30 MS. PEEBLES: Page three, top of the page.

10:43:55 (Whereupon, there was a pause in the 10:44:08 proceeding.)

10:44:08 **A.** All I see is that I was saying that I was young and 10:44:17 on cocaine.

10:44:20 **Q.** Does it say, "that and the cocaine?"

10:44:25 **A.** It says, "How the hell, why did you even -- why did 10:44:28 they even involve you in this or do this?" I said, "I 10:44:31 don't know." Tonya said, "I mean you were young." I 10:44:34 stated, "All I know is yeah, that and the cocaine." I was 10:44:38 young and the cocaine. That's all I'm getting out of that.

10:44:43 **Q.** Now, did Rich Murtaugh's name get mentioned anywhere 10:44:48 or any time during that audio recording?

10:44:50 **A.** No.

10:44:51 **Q.** After this conversation with Tonya Priest on March 10:45:03 second, you were asked to come down to the Sheriff's

10:45:11 Department and be interviewed. Do you remember that?

10:45:12 A. Yes.

10:45:12 Q. And that was the first interview with Investigator
10:45:16 Pietroski?

10:45:16 A. Yes.

10:45:16 Q. And before you did that, before you went down there,
10:45:19 you sent text messages. Who'd you send text messages to?

10:45:24 A. I don't remember.

10:45:26 Q. Well, if I played the audio of your interview with
10:45:29 Pietroski or gave you the transcript, would that help
10:45:31 refresh your recollection?

10:45:32 A. I texted Rich Murtaugh.

10:45:34 Q. You did text Rich Murtaugh?

10:45:36 A. But I don't know if I text anybody else.

10:45:38 Q. Well, that's my question. So you sent a text
10:45:41 message to Rich Murtaugh, and who is Rich Murtaugh?

10:45:44 A. He's been a family friend my whole life.

10:45:46 Q. And what does he do?

10:45:47 A. He owns, runs a junkyard in Fulton.

10:45:50 Q. Now you -- at some point Investigator Pietroski
10:45:57 wanted to see your cell phone during that interview?

10:45:59 A. Yes.

10:46:00 Q. And you said he could?

10:46:02 A. Yes.

10:46:03 Q. And it's at that point you volunteered that you had

10:46:07 texted Rich Murtaugh?

10:46:08 **A.** Yes.

10:46:09 **Q.** And those text message were on your phone when you
10:46:12 gave them to Rich, or when you gave them to Investigator
10:46:16 Pietroski?

10:46:16 **A.** I don't remember. I don't remember if they were on
10:46:20 there or not.

10:46:21 **Q.** If I showed you the transcript of your audio
10:46:25 interview, would that help refresh your recollection?

10:46:29 **A.** Yeah. Yes. What page of the interview?

10:46:40 MS. PEEBLES: I have everything queued up for
10:46:43 the audio so I just have to find it real quick, Judge.
10:47:31 Oh, I see, okay. Page twenty.

10:47:39 **Q.** I'm going to hand you Defense Exhibit 32 and ask you
10:47:43 to look at page twenty and read the top portion to yourself
10:47:47 and ask -- I want to ask if that helps refresh your
10:47:50 recollection about whether those text messages were on that
10:47:52 cell phone.

10:48:02 (Whereupon, there was a pause in the
10:48:14 proceeding.)

10:48:14 **A.** Yes.

10:48:16 **Q.** So now you recall that those text messages were on
10:48:19 the cell phone when you gave them to Investigator
10:48:22 Pietroski?

10:48:22 **A.** Yes.

10:48:22 **Q.** And again, Rich Murtaugh's name never came up during that audio recording with Tonya Priest.

10:48:35 MR. OAKES: Asked and answered.

10:48:38 THE COURT: Sustained.

10:48:38 **Q.** Now during the telephone conversation, you indicated that you would never disclose what you knew to investigators. Do you remember saying that to Tonya Priest?

10:48:49 **A.** Yes.

10:48:50 **Q.** You indicated you were afraid?

10:48:57 **A.** Yes.

10:48:59 **Q.** And who did you say you were afraid of during that phone call?

10:49:04 **A.** The tough guys in Mexico. I don't know.

10:49:15 **Q.** Would you like to refresh your recollection?

10:49:17 **A.** I got it.

10:49:21 (Whereupon, there was a pause in the proceeding.)

10:49:26 **A.** Dan Barney, Bob Zakala, David Maynes, all of them. I don't know all of them guys. I wasn't afraid of them.

10:49:42 **Q.** Why did you name Dan Barney as somebody that you were afraid of?

10:49:47 **A.** He was a tough guy in ninety-four and ninety-five. That's all I know.

10:49:54 **Q.** How -- did you have contact with him back in

10:49:57 ninety-four?

10:49:57 **A.** I've never met him.

10:50:01 **Q.** Do you know whether Roger had any type of contact
10:50:07 with Dan Barney?

10:50:08 **A.** He said his name, but I've never met the two of them
10:50:15 together have I seen or contact.

10:50:16 **Q.** Roger said Dan Barney's name?

10:50:19 **A.** Yeah. They were school friends.

10:50:21 **Q.** And Bob Zakala --

10:50:23 MR. OAKES: Objection, Your Honor, as to what
10:50:24 time frame are we talking about.

10:50:29 THE COURT: I think she just answered they
10:50:30 were school friends. I'm assuming -- can we ask when
10:50:32 this acknowledgement was made by Breckenridge?

10:50:36 **Q.** How often did Roger bring up -- first of all, how
10:50:39 often did Roger bring up the name Dan Barney to you when
10:50:42 you were with Roger?

10:50:43 **A.** Just once.

10:50:44 **Q.** And when was that?

10:50:46 **A.** I don't remember. It was just we were talking about
10:50:51 tough guys in Mexico. He was telling me about tough guys
10:50:54 in Mexico.

10:50:55 **Q.** And Bob Zakala, how do you know Bob Zakala?

10:50:58 **A.** I've met Bob Zakala.

10:51:02 **Q.** How many times?

10:51:02 A. Twice.
10:51:03 Q. When?
10:51:03 A. When I was babysitting for Roger and Tracey.
10:51:06 Q. Do you remember what year that was?
10:51:09 A. Ninety-four.
10:51:12 Q. Tell me what happened when you met Bob Zakala in
10:51:19 ninety-four.
10:51:19 MR. OAKES: Objection, relevance.
10:51:21 THE COURT: Why relevant?
10:51:23 MS. PEEBLES: Well, Your Honor, she's the one
10:51:24 who brought it up during the monitored call.
10:51:26 THE COURT: I'll allow it.
10:51:28 Q. You can answer.
10:51:29 A. Okay, what was the question?
10:51:30 Q. The question was -- I don't even remember. What
10:51:37 happened when you met Bob Zakala?
10:51:39 THE COURT: You're not asking non-leading
10:51:42 questions are you? I'm not making fun, I'm joking.
10:51:48 Q. Did anything happen when you met Bob Zakala?
10:51:52 A. We smoked a couple joints.
10:51:55 Q. Anything else?
10:51:57 A. Yeah. We had sex.
10:51:59 Q. Why did you have sex with Bob Zakala?
10:52:04 MR. OAKES: Objection, relevance, Your Honor.
10:52:05 THE COURT: How's this relevant?

10:52:07 MS. PEEBLES: It's relevant because my
10:52:09 understanding is that Roger Breckenridge required her
10:52:12 to have sex in order to pay off a drug debt.

10:52:17 **A.** That was never said to me.

10:52:19 THE COURT: I'll allow it.

10:52:21 **A.** That was never said to me.

10:52:23 **Q.** Okay, well, explain the circumstances under which
10:52:25 you had sex with Bob Zakala.

10:52:28 **A.** I went in the bedroom with him, had sex, Roger said,
10:52:33 "Thanks for taking care of that."

10:52:35 **Q.** To you?

10:52:36 **A.** To me.

10:52:38 **Q.** Did you know what you were taking care of?

10:52:43 **A.** Still don't know.

10:52:47 **Q.** You mentioned Dave Maynes. How do you know Dave
10:52:54 Maynes?

10:52:54 **A.** I don't. Just another tough guy in Mexico that
10:52:58 Roger used to say was tough guys.

10:53:01 **Q.** Now, after you were -- well, strike that. After --
10:53:23 well, after you were contacted by sheriff's deputies and
10:53:26 asked to come down in March of 2013, after this audio
10:53:29 recording, did you text anybody else other than Rich
10:53:35 Murtaugh?

10:53:35 **A.** I don't remember.

10:53:37 **Q.** If I showed you a document, that would help refresh

10:53:41 your recollection?
10:53:41 **A.** Yes.
10:53:44 **Q.** I'm going to need that exhibit back so I can point
10:53:47 to the --
10:53:48 **A.** Which one?
10:53:52 **Q.** This one.
10:54:38 (Whereupon, there was a pause in the
10:54:55 proceeding.)
10:54:55 MS. PEEBLES: See, if I were able to ask
10:54:57 leading questions, Judge, it would certainly help
10:55:01 refresh her recollection.
10:55:02 THE COURT: Point well taken. Is this still
10:55:39 thirty-six?
10:55:39 MS. PEEBLES: Okay, this is thirty-two and
10:55:42 it's on page six.
10:55:43 THE COURT: Thank you.
10:55:51 **Q.** All right, I'm going to ask you to look at page six
10:55:54 and see if that helps refresh your recollection of whether
10:55:57 or not you had any other text message exchanges before you
10:56:01 went down to the interview on March seventh of 2013.
10:56:10 (Whereupon, there was a pause in the
10:56:28 proceeding.)
10:56:28 **A.** Did I text anybody else? Is that the question?
10:56:30 **Q.** Yes.
10:56:31 **A.** Tonya.

10:56:32 **Q.** And do you remember what you were saying when you
10:56:36 were text messaging back and forth?
10:56:38 **A.** I don't recall the text messages, no.
10:56:41 **Q.** Well, if you read page six.
10:56:42 **A.** Yeah.
10:56:42 **Q.** Would that help refresh your recollection?
10:56:44 **A.** Um hum.
10:56:46 **Q.** Did you ask her if she was a cop?
10:56:49 **A.** Yes.
10:56:49 **Q.** And did she -- and did you question who she meant by
10:57:02 DB?
10:57:03 **A.** Yes.
10:57:03 **Q.** What did you say regarding DB?
10:57:09 **A.** I didn't know DB or who he was or what it was, stood
10:57:12 for.
10:57:15 **Q.** After you had that text exchange with Tonya Priest,
10:57:31 did you talk to her again?
10:57:33 **A.** No. That was after the conversation, phone
10:57:40 conversation.
10:57:42 **Q.** And was that the last contact or communication
10:57:46 you've had with Tonya Priest?
10:57:47 **A.** Yes.
10:57:48 **Q.** Now you indicate that you wanted to text Rich
10:58:04 Murtaugh because Roger worked at the junkyard, is that what
10:58:07 you texted Rich Murtaugh?

10:58:08 **A.** Several reasons why I would text Rich Murtaugh.

10:58:12 **Q.** What did you tell Investigator Pietroski?

10:58:15 **A.** That I texted asking because I believe that's where
10:58:18 Roger was working at the time.

10:58:27 **Q.** Did you initially tell Investigator Pietroski that
10:58:30 Tonya Priest mentioned Rich Murtaugh?

10:58:34 **A.** I don't remember. I don't remember.

10:58:39 **Q.** Did you drive Roger to Rich Murtaugh's when he
10:58:44 worked at the junkyard?

10:58:45 **A.** Yes.

10:58:45 **Q.** And how often did you do that?

10:58:48 **A.** Sometimes it was one day a week, sometimes it was
10:58:52 three.

10:58:53 **Q.** Now when you drove yourself to the -- well, strike
10:59:06 that. How did you get to the Sheriff's Department on March
10:59:09 seventh of 2013 when you were going to be interviewed?

10:59:12 **A.** My boyfriend drove me. My then boyfriend drove me.

10:59:17 **Q.** And what were you told when you arrived for the
10:59:21 interview if you remember?

10:59:28 MR. OAKES: Objection, relevance, Your Honor.

10:59:30 THE COURT: I'll allow it.

10:59:43 (Whereupon, there was a pause in the
10:59:49 proceeding.)

10:59:49 **Q.** Do you remember?

10:59:51 **A.** I was told that I wasn't in any trouble and thank

10:59:54 you for coming in.

10:59:55 **Q.** So you were not considered a suspect far as you
11:00:00 knew?

11:00:00 MR. OAKES: Objection, Your Honor.

11:00:01 THE COURT: Sustained.

11:00:03 **Q.** During that interview with Investigator Pietroski,
11:00:21 you said that the Oswego County Sheriff's investigators
11:00:25 swarmed Grandma Breckenridge's house. Do you remember
11:00:29 that?

11:00:29 **A.** Yes.

11:00:29 **Q.** And what do you remember about that?

11:00:32 **A.** Just that a bunch of them knocked on the door, came
11:00:36 in, talked to Roger and left.

11:00:40 **Q.** Where was Rogers mother's house located when they
11:00:44 swarmed her house?

11:00:46 **A.** 69A in Parish, Route 69A.

11:00:52 MR. OAKES: Your Honor, can we get a
11:00:54 foundation as to time frame or when we're talking
11:00:56 about?

11:00:57 **Q.** Do you recall when they swarmed Grandma
11:01:00 Breckenridge's house?

11:01:01 **A.** I don't recall when.

11:01:03 **Q.** Do you know what year it was?

11:01:04 **A.** Well, it was after Roger and I were together, so it
11:01:10 was ninety-five.

11:01:11 **Q.** So they swarmed Grandma Breckenridge's house in 1995?

11:01:14 **A.** Yes.

11:01:15 **Q.** Do you recall what month?

11:01:17 **A.** I don't recall which month.

11:01:20 **Q.** When you were interviewed by Investigator Pietroski, when he started asking you questions, you denied the content of the audio recording with Tonya Priest, is that right?

11:01:41 **A.** I don't know. We were talking about a lot.

11:01:49 **Q.** Well, did you say that when Tonya brought it up, you said, "Tonya, what the hell are you talking about?"

11:01:57 **A.** Yes, I did say that.

11:01:59 **Q.** But you never said that on the audio recording though.

11:02:02 **A.** No. The first conversation I said that to her. Tonya and I talked the night before on the phone too. That's when I was referring to that.

11:02:09 **Q.** But you denied the content of the phone call on March second of 2013?

11:02:15 **A.** I believe we talked about it.

11:02:18 **Q.** What do you mean you believe we talked about it?

11:02:20 **A.** We talked about it.

11:02:21 **Q.** What did you say?

11:02:22 **A.** I went there for -- to speak with the investigator

11:02:25 about the disappearance of Heidi Allen. We talked about it.

11:02:28 Q. And when he confronted you with the fact the call had been monitored and recorded, you said she chopped something.

11:02:47 (Whereupon, there was a pause in the proceeding.)

11:03:23 A. Do you know where I would find that in this?

11:03:27 Q. Page eighteen.

11:03:39 (Whereupon, there was a pause in the proceeding.)

11:04:01 A. Yes. I said that -- I said that she chopped something, but what was the question?

11:04:11 Q. That was the question. Did you say that she chopped something?

11:04:14 A. Yes.

11:04:15 Q. But it was because you didn't know it had been monitored by the Sheriff's Department at that point that you said that?

11:04:23 A. Yes.

11:04:23 Q. And Investigator Pietroski started asking you specifics about what was on that audio recording during that interview on March seventh?

11:04:40 A. Yes.

11:04:41 Q. And you told him that you never said anything about

11:04:52 a van being brought over, having a girl in a van being
11:04:56 brought over to your house when he asked you those
11:05:00 questions.
11:05:00 **A.** Yes, I said that to him.
11:05:03 **Q.** But you actually did say that on the audio
11:05:07 recording.
11:05:08 **A.** Yes.
11:05:08 **Q.** When you were interviewed by Investigator Rojek in
11:05:23 August of 2014, you told Investigator Rojek that Tonya
11:05:29 Priest gave them a hell of a start into this investigation.
11:05:32 Did you tell him that?
11:05:34 MR. OAKES: Objection, Your Honor. One,
11:05:37 leading. I guess what's the relevance.
11:05:42 THE COURT: It is leading. I'll allow it. Be
11:05:46 careful of leading questions please.
11:05:49 **A.** What was it? The question?
11:05:50 **Q.** Did you tell Investigator Rojek that Tonya Priest
11:05:55 gave them a hell of a start into the investigation of Tonya
11:05:58 Priest?
11:05:59 **A.** I was being very sarcastic, but yes.
11:06:02 **Q.** You said that.
11:06:03 **A.** Yes, I said that.
11:06:05 **Q.** You also told Investigator Pietroski during that
11:06:30 interview -- what did you tell him about coming forward if
11:06:34 you knew anything?

11:06:34 **A.** That I would. A long time ago.
11:06:36 **Q.** You told him that you would a long time ago?
11:06:39 **A.** I would have a long time ago if I knew anything.
11:06:41 **Q.** And how is that different from what you said on the
11:06:43 audio recording with Tonya Priest?
11:06:48 **A.** Tanya's not the police. Tanya's not the police. I
11:06:55 can tell Tonya anything. I got to tell the police the
11:06:58 truth.
11:06:58 **Q.** Well, you've acknowledged that you've lied to the
11:07:01 police during the investigation did you not?
11:07:03 **A.** I lied to the police?
11:07:15 **Q.** Let me ask you this. Do you know an individual by
11:07:16 the name of Joe Storto?
11:07:19 **A.** I don't know of it. I know of him, I don't know
11:07:22 him.
11:07:22 **Q.** Did you meet him on Facebook?
11:07:24 **A.** Yes.
11:07:25 **Q.** Did you text message Joe Storto?
11:07:28 **A.** Yes.
11:07:28 **Q.** And why were you text messaging Joe Storto?
11:07:33 **A.** He -- I thought we were going to try hooking up.
11:07:37 **Q.** And do you remember when that was?
11:07:39 **A.** We talked for months. It was June to August, June
11:07:49 to -- it was after August probably, October.
11:07:54 **Q.** Of what year?

11:07:55 **A.** 2014.

11:07:57 **Q.** And during your text message exchange, did you discuss the Heidi Allen investigation?

11:08:03 **A.** He tried, he discussed it, yes.

11:08:06 **Q.** And do you remember what was exchanged during that text message?

11:08:10 **A.** I don't.

11:08:11 **Q.** If I show you the text messages, would that help refresh your recollection?

11:08:15 **A.** Yes.

11:08:25 THE COURT: Are you all right? You need water?

11:08:26 THE WITNESS: I got some. Thank you.

11:08:48 **Q.** I'm going to hand you what's been marked as Defense Exhibit 39 and ask -- take a look at that and see if that helps refresh your recollection about the exchange you had with Joe Storto.

11:09:02 (Whereupon, there was a pause in the proceeding.)

11:09:42 **Q.** Does that help refresh your recollection about the text message exchange with Joe Storto?

11:09:47 **A.** Yes.

11:09:47 **Q.** And were you the one that initiated the Heidi Allen case during the text message exchange?

11:09:56 **A.** With what you have here, yes, but no.

11:09:59 **Q.** Now, did you tell Joe Storto that you signed a false
11:10:08 statement in connection with the investigation?
11:10:10 **A.** No. I told him I signed a false statement but I
11:10:13 didn't tell him in regards to what.
11:10:16 **Q.** Well, what were you referring to during that text
11:10:20 exchange regarding a false statement with Joe Storto?
11:10:23 **A.** I was letting him know that nobody's going to
11:10:27 believe me because I have been convicted of signing a false
11:10:30 statement.
11:10:32 **Q.** Well, in that -- that was -- well, let's talk about
11:10:35 that. You were convicted of signing a false statement what
11:10:38 year was that?
11:10:39 **A.** 2008.
11:10:40 **Q.** And who was that false statement given to?
11:10:44 **A.** The State Police.
11:10:46 **Q.** And what was that in connection with?
11:10:49 **A.** A washer and dryer.
11:10:50 **Q.** Didn't have anything to do with the Heidi Allen
11:10:53 case.
11:10:53 **A.** No.
11:10:53 **Q.** So that was long gone, that was back in 2008, and
11:10:57 did you receive any punishment for that?
11:10:59 **A.** Yes.
11:11:00 **Q.** So that case was not pending when you were having
11:11:03 that exchange with Joe Storto?

11:11:05 **A.** No, but we had talked about much more than just this.

11:11:08 **Q.** Well, we'll get to that in a moment. Now when you were having that exchange with him, you said that Oakes is trying to protect you. Is that what you said in that text message?

11:11:19 **A.** Yes.

11:11:20 **Q.** And Mr. Oakes wasn't trying to protect you regarding a false statement you gave in 2008.

11:11:25 **A.** No. What I meant is that the -- it's the DA's job to protect the innocent, that's about it. It wasn't anything about protecting me, it was the protecting the innocent, that's it.

11:11:38 **Q.** But did you say that you did sign a false statement to Joe Storto during that --

11:11:45 **A.** I did, but I did not say it was in regards to the Heidi Allen case.

11:11:49 **Q.** Well, leading up to that were you talking about Gary Thibodeau getting a new trial?

11:11:54 **A.** Yes.

11:11:55 **Q.** And you were responding to a question where it was you didn't do anything wrong.

11:12:07 **A.** Let me refresh my memory.

11:12:10 (Whereupon, there was a pause in the proceeding.)

11:12:30

11:12:30 **A.** I see that I said that to him, but it does not say that I did sign a false statement in regards to this.

11:12:36 MS. PEEBLES: Well, at this time, Judge, I'd like to offer exhibit what's the number on there?

11:12:42 THE COURT: Thirty-nine.

11:12:43 MS. PEEBLES: Thirty-nine.

11:12:46 MR. OAKES: Is that the series of text messages?

11:12:48 MS. PEEBLES: Yes.

11:12:49 MR. OAKES: The People object, Your Honor. One, hearsay. Two, whether these can be authenticated, and I looked through this exhibit, this was attached to the motions, there appears to be text messages that were missing in between these. As I'm looking at them, there are like tops of certain text messages you see at the bottom of one screen, flip the next page and there's not a corresponding text, there appears to be incomplete.

11:13:14 THE WITNESS: Yes.

11:13:15 MS. PEEBLES: There were some sexual comments that were pretty graphic that I removed, but I can add them in and that would make it complete. I did that out of respect for the parties.

11:13:26 THE COURT: If it includes the entire text message, do you have any objection? She authenticated.

11:13:33 MR. OAKES: I mean if this witness they're
11:13:35 authenticated, but right now it appears to be
11:13:37 incomplete.

11:13:38 THE COURT: Provide the complete, how's that?

11:13:40 MS. PEEBLES: I will complete them, Judge.

11:13:42 THE COURT: Provide the complete, let Mr.
11:13:43 Oakes look at it, and then I'll decide, but I don't see
11:13:46 any reason why it would not because the other gentleman
11:13:48 authenticated he wrote the text.

11:13:51 MR. OAKES: No, Your Honor, I think this is a
11:13:52 different issue.

11:13:53 THE COURT: Is this a different person?

11:13:54 MR. OAKES: If you are referring to Carl, he
11:13:57 was talking about Facebook.

11:13:58 THE COURT: She can authenticate her own texts
11:14:01 and I'd look at it for her response, not Mr. Storto's.

11:14:05 MR. OAKES: That's fine.

11:14:06 THE COURT: What he says is hearsay so I will
11:14:09 let it in on a limited purpose after you provide
11:14:12 full --

11:14:12 MS. PEEBLES: Okay, that sounds fine.

11:14:13 THE COURT: You're not going to offend me, but
11:14:16 thank you.

11:14:17 **Q.** Okay, Ms. Wescott, can you read the text messages
11:14:23 that you actually sent to Mr. Storto?

11:14:28 MR. OAKES: Again, Your Honor, the document's not in evidence at this point.

11:14:31 THE COURT: Can't read from it, yeah.

11:14:33 MS. PEEBLES: Well, I thought the Court --

11:14:35 THE WITNESS: Was that a picture just taken of me?

11:14:37 THE COURT: Did somebody just take a picture of her?

11:14:39 THE WITNESS: Flash right behind the guy in the blue shirt.

11:14:42 THE COURT: What blue shirt?

11:14:42 THE WITNESS: The blue and white, there was a flash right --

11:14:46 THE COURT: Excuse me? Did somebody take a picture?

11:14:51 MR. OAKES: She's offering you the phone, Your Honor, if you want to see it.

11:14:55 THE COURT: Yeah. People were told no pictures.

11:15:00 MR. OAKES: (Handing the phone to the Court).

11:15:05 THE COURT: Do you mind if I look at your phone? Just that screen.

11:15:08 UNIDENTIFIED PERSON: Go ahead.

11:15:16 THE COURT: I don't see a picture.

11:15:18 MR. OAKES: She said she hit the flash.

11:15:21 THE COURT: Remember, everybody, she did not consent to having any photograph or audio. Thank you. There's no picture.

11:15:30 **Q.** All right, when you were doing the text exchange were you -- you wrote that you were concerned about being charged with something, but you had to wait until a decision was made by the Judge.

11:15:50 (Whereupon, there was a pause in the proceeding.)

11:16:11 **A.** What was your question?

11:16:24 **Q.** My question was you sent a text message that said you were possibly being charged with something, but you had to wait for the judge to make a decision.

11:16:36 **A.** Show me where I said that in this?

11:16:39 **Q.** Let me --

11:16:52 (Whereupon, there was a pause in the proceeding.)

11:17:22 **Q.** I was paraphrasing, okay. That's what I'm referring to. You said you did sign a false statement, but what the Judge says, goes.

11:17:35 **A.** Yes.

11:17:37 **Q.** And is it your testimony that you're referring to a statement that you gave in 2008?

11:17:42 **A.** Yes.

11:17:44 **Q.** That's your testimony?

11:17:45 **A.** Yes.

11:17:46 **Q.** Okay, and how would that impact anything concerning this case from 2008?

11:17:52 **A.** I didn't say that it was.

11:17:55 **Q.** Well, you're referring to what you said in that text message. You said that that's the false statement that you're talking about.

11:18:00 **A.** No. I'm referring to the statement in 2007 that I signed with the State Police. I was convicted. That's why I said that about a false statement.

11:18:09 **Q.** And prior to that text message, you said you had to plead the Fifth, you said that in that text exchange, for something you didn't do. Is that what you said?

11:18:22 **A.** Yes.

11:18:22 **Q.** And were you saying you had to plead the Fifth in connection with an investigation from 2008?

11:18:28 **A.** No.

11:18:28 **Q.** And what were you referring to when you sent that text message?

11:18:32 **A.** The Heidi Allen case.

11:18:34 **Q.** So how do we jump to 2008 in a false statement that you provided concerning a washer and dryer?

11:18:43 **A.** Because I told him it was going -- I guess when you show all this text messages, it states that I -- nobody's going to believe me because I have been convicted of

11:18:55 signing a false statement.

11:18:57 Q. Well --

11:18:57 A. That doesn't say that I signed a false statement
11:18:59 with the Oswego County Sheriffs in regards to the Heidi
11:19:03 Allen case.

11:19:03 Q. Does it say "but I did sign a false statement" when
11:19:06 he said to you that you didn't do anything wrong?

11:19:10 A. Yes, I did say that.

11:19:16 Q. And I just -- but it's your testimony here under
11:19:20 oath that you're referencing a false statement that you
11:19:23 gave in 2008.

11:19:25 MR. OAKES: Objection. Asked and answered
11:19:27 multiple times.

11:19:27 THE COURT: Asked and answered many times.

11:19:31 THE WITNESS: I'm sorry?

11:19:32 THE COURT: You don't have to answer.

11:19:34 Q. Now, I'm going to ask you some questions about an
11:19:50 individual named Carl Robinson. Do you know Carl Robinson?

11:19:54 A. An acquaintance, yes.

11:19:56 Q. And how do you know him?

11:19:58 A. I have known him from working on computers and over
11:20:03 at James Steen and Vickie's house.

11:20:08 Q. And when -- can you give me a time frame as to when
11:20:10 that was?

11:20:13 A. I would say early two-thousands to present that I've

11:20:22 known him.

11:20:23 Q. And you knew him socially?

11:20:34 A. Yes.

11:20:35 Q. And have you communicated with him on Facebook?

11:20:41 A. When?

11:20:43 Q. In the last couple of years?

11:20:45 A. In the last couple of years, yes.

11:20:46 Q. Was he a friend of yours on Facebook?

11:20:49 A. Yes.

11:20:49 Q. Is he still a friend of yours on Facebook?

11:20:54 A. No.

11:20:55 Q. Now, I want to draw your attention specifically to 11:21:02 July or June of 2014. Were you communicating with Carl 11:21:08 Robinson on Facebook?

11:21:10 A. Yes.

11:21:32 (Whereupon, there was a pause in the 11:22:20 proceeding.)

11:22:20 Q. Now when you were communicating with Carl Robinson 11:22:23 on Facebook, were you discussing the disappearance of Heidi 11:22:26 Allen?

11:22:27 A. He had mentioned it to me why the Post-Standard was 11:22:30 harassing me.

11:22:31 Q. I'm going to hand you what's been marked as Defense 11:22:34 Exhibit 37 and ask if you can take a look at this document. 11:22:40 Do you know what's depicted on that document?

11:22:43 **A.** Do I know what? I'm sorry.

11:22:46 **Q.** What is that document?

11:22:48 **A.** I have no idea what this is.

11:22:55 **Q.** Well, is that an e-mail exchange between you and
11:22:58 Carl Robinson?

11:23:00 **A.** Looks it, but we must have been pretty quick.

11:23:04 **Q.** Excuse me?

11:23:08 **A.** This looks like they're all within minutes.

11:23:14 **Q.** And is that a picture of you on that document?

11:23:18 **A.** Yes, that's a picture of me on that document.

11:23:20 **Q.** Now on your Facebook account, do you have a user
11:23:23 name and password?

11:23:24 **A.** Yes.

11:23:24 **Q.** So you're not denying that you had a Facebook
11:23:27 conversation with Carl Robinson in June of 2014, correct?

11:23:33 MR. OAKES: June or July?

11:23:36 MS. PEEBLES: June of 2014.

11:23:37 **A.** Am I denying it? I'm sorry, what was the question?

11:23:40 **Q.** Well, you acknowledge having a Facebook conversation
11:23:42 with Carl Robinson in June of 2014?

11:23:45 **A.** Multiple, yes.

11:23:47 **Q.** And part of it was you said the Post-Standard was
11:23:50 harassing you in connection with the investigation,
11:23:53 correct?

11:23:53 **A.** Yes.

11:23:53 **Q.** And is that what's reflected on that document?
11:23:58 **A.** I did not say any of this stuff to Carl Robinson.
11:24:03 **Q.** So you deny responding to his question about why the
11:24:09 Post-Standard was harassing you?
11:24:11 **A.** No, actually this has nothing to do with -- this
11:24:20 wasn't even that day.
11:24:22 **Q.** Well, I don't -- what day was it?
11:24:24 **A.** I don't know. I don't recall saying this stuff at
11:24:26 all to him.
11:24:28 **Q.** Was his question surrounding why the Post-Standard
11:24:32 was harassing you?
11:24:33 **A.** That's not even in this at all.
11:24:37 **Q.** It's not?
11:24:38 **A.** No.
11:24:40 **Q.** Is there a question about why the Post-Standard
11:24:44 might be harassing you?
11:24:45 **A.** Not on this.
11:24:47 **Q.** Does it reference the knowledge you might have
11:24:50 surrounding the Heidi Allen case?
11:24:52 **A.** I didn't -- I did not write this.
11:25:00 **Q.** So you deny writing the Facebook message, is that
11:25:03 what you're saying?
11:25:04 **A.** These ones.
11:25:06 **Q.** So who would have been using your Facebook account
11:25:09 with your user name and password?

11:25:11 **A.** Oh, I have several people that have access to my
11:25:14 account.
11:25:14 **Q.** And who would those individuals be?
11:25:16 **A.** I have children, I have multiple friends.
11:25:21 **Q.** That would respond to inquiries regarding the
11:25:24 disappearance of Heidi Allen?
11:25:26 **A.** Anyone could -- I have multiple people.
11:25:30 **Q.** Well, let me talk to you about Rod West. Now you
11:25:34 mentioned Rod West before because he's a relative of Roger
11:25:37 Breckenridge?
11:25:37 **A.** Yes.
11:25:37 **Q.** Now you would go to Rod West's house for cookouts
11:25:41 and gatherings and so forth?
11:25:42 **A.** Yes.
11:25:43 **Q.** Now, when you were at Rod West's house, was the
11:25:51 topic of Heidi Allen ever brought up?
11:25:53 **A.** Never.
11:25:54 **Q.** When you were interviewed by Agent Rojek in August
11:26:06 of 2014, did you state that what you said on the audio
11:26:16 recording was retarded? Did you use the term "retarded?"
11:26:19 **A.** Yes.
11:26:20 **Q.** Is that a word that you use in your vocabulary?
11:26:30 **A.** Yes, it is.
11:26:30 MR. OAKES: Objection, Your Honor. How's that
11:26:33 relevant?

11:26:34 THE COURT: Yeah.

11:26:35 MR. OAKES: It's a word she uses. She used
11:26:38 it.

11:26:38 MS. PEEBLES: Well, it was used during the
11:26:39 Facebook exchange, Judge, with Carl Robinson.

11:26:44 THE COURT: So she would be the only person to
11:26:46 ever use that word?

11:26:47 MS. PEEBLES: No, Judge, but I think it's kind
11:26:50 of a word that's not typically used, particularly these
11:26:53 days, in conversation.

11:26:59 THE COURT: No, I'm going to sustain the
11:27:01 objection.

11:27:02 **Q.** Now, did you have a Facebook conversation with --
11:27:07 did you -- strike that. Did you de-friend Carl Robinson?

11:27:10 **A.** No. He de-friended me the day the story broke on
11:27:14 the Post-Standard.

11:27:14 **Q.** So it's your testimony that Carl Robinson
11:27:17 de-friended you?

11:27:17 **A.** Yes.

11:27:18 **Q.** I'm going to hand you what's been marked -- well,
11:27:22 first of all, I'm going to ask you did you have a
11:27:24 conversation on Facebook with -- instant message exchange
11:27:28 with Carl Robinson in July of 2014?

11:27:31 **A.** In July of 2014?

11:27:34 **Q.** Yes. After the June conversation that you had with

11:27:37 Carl.

11:27:38 **A.** Carl and I conversated all the time when we were -- 11:27:42 notice we were on Chat or Facebook.

11:27:44 **Q.** Well, let me go back to this. You said that the 11:27:46 Post-Standard was harassing you and that you were having a 11:27:49 conversation with Carl Robinson. What was the nature of 11:27:53 your conversation with Carl Robinson concerning the Heidi 11:27:56 Allen case?

11:27:57 **A.** There was no nature. I put the status up. He sent 11:28:00 me an inbox message that said why is the Post-Standard 11:28:05 harassing you.

11:28:05 **Q.** And did you respond?

11:28:06 **A.** Yes.

11:28:07 **Q.** And what was your response?

11:28:08 **A.** Tonya Priest is crazy and said that Thumper had 11:28:13 nothing to do with it.

11:28:15 **Q.** And was there any response to your statement?

11:28:21 **A.** There was plenty of responses.

11:28:23 **Q.** Well, how long did this conversation take place?

11:28:28 **A.** It wasn't very long because I was waiting for my son 11:28:33 to get off the bus. I'm positive I was waiting for my son 11:28:38 to get off the bus and I was sending --

11:28:40 **Q.** What bus would he be getting off of?

11:28:43 **A.** My six year old? His school bus.

11:28:45 **Q.** He was in school at the end of June of 2014?

11:28:49 A. Yes. His last week was the last week of June and he was being bussed.

11:28:53 Q. June what?

11:28:55 A. Could you supply me with a school calender from last year to refresh my memory?

11:29:02 Q. Would he be in school on June thirtieth of 2014?

11:29:05 A. No.

11:29:05 Q. Now, you say you had another conversation with Carl Robinson or did you have another conversation with him in July of 2014?

11:29:17 A. Had a conversation with him when his grandmother passed away.

11:29:21 Q. And when was that?

11:29:22 A. I couldn't tell you the date. I don't remember the date.

11:29:25 Q. Did you have -- how many user names did you have on Facebook?

11:29:34 A. I have three profiles.

11:29:35 Q. All right, and what are they?

11:29:38 A. Well, right now I have one, but they were Jen, Jen Lynn, Jen Wescott and Jen Wescott.

11:29:44 Q. Now, when you were interviewed by Agent Rojek and District Attorney Oakes, he was present there for that interview too.

11:29:54 A. Um hum.

11:29:55 **Q.** In August of 2014.
11:29:56 **A.** Yes.
11:29:56 **Q.** Did they ask you about the text or the e-mail or
11:30:02 instant message exchanges on Facebook?
11:30:06 **A.** You'd have to refresh my memory. I've had a lot of
11:30:10 things happen since then.
11:30:49 **Q.** I'm going to hand you what's been marked as -- well,
11:30:56 it is part of Exhibit 124. I can give you the whole thing.
11:31:30 MS. BIANCO: Lisa, do you want a clean copy?
11:31:37 MS. PEEBLES: Sure.
11:31:37 **Q.** Well, I'm going to hand you part of Defense Exhibit
11:31:41 124 and ask you to read from the bottom of the page down to
11:31:44 the middle of the next page regarding the exchange between
11:31:47 you and Carl Robinson.
11:31:54 (Whereupon, there was a pause in the
11:32:38 proceeding.)
11:32:38 **Q.** Now when you were interviewed by Investigator Rojek
11:32:42 and DA Oakes, did you talk about the Facebook instant
11:32:46 messages between you and Carl Robinson?
11:32:48 **A.** Yes.
11:32:48 **Q.** And they asked you why you wrote those text
11:33:01 messages?
11:33:01 **A.** Yes.
11:33:01 **Q.** What did you tell them?
11:33:03 **A.** Told them I didn't recall making those text

11:33:07 messages.

11:33:12 **Q.** And you said you since deactivated your Facebook accounts?

11:33:16 **A.** Yes.

11:33:16 **Q.** So who de-friended who, you or Carl?

11:33:19 **A.** He de-friended me, he blocked -- he actually blocked me the day the story broke, July twenty-fourth, 2014.

11:33:28 **Q.** Didn't he ask you a question when you were instant messaging him on your Facebook account and you deactivated him?

11:33:36 THE COURT: When?

11:33:37 MR. OAKES: Objection, Your Honor.

11:33:38 THE COURT: When?

11:33:39 MR. OAKES: I guess what is the relevance of who deactivated here?

11:33:42 THE COURT: Seems to be legitimate. Why is it relevant who de-friended, deactivated or blocked?

11:33:49 MS. PEEBLES: I barely understand what it means, but it's significant, Judge, after the fact that the text messages were publically exposed, she de-friended Carl Robinson.

11:34:00 THE COURT: I don't think it's relevant. I'll sustain the objection.

11:34:02 MS. PEEBLES: But then there was another exchange after that which is what I was getting to.

11:34:08 THE COURT: Get to the other exchange. What
11:34:10 is the date of this alleged other exchange?

11:34:12 MS. PEEBLES: The second one was July
11:34:14 twenty-seventh of 2014.

11:34:16 **Q.** So is it your testimony that you don't recall
11:34:36 exchanging the text messages that are set forth in defense
11:34:40 Exhibit 27, or 37?

11:34:45 **A.** Do I deny this?

11:34:47 **Q.** Yes.

11:34:47 **A.** Yes, I deny this.

11:34:50 **Q.** All right, now I'm going to hand you what's been
11:34:52 marked as Defense Exhibit 38 and ask you to take a look at
11:34:55 this and see if you can tell me what's depicted in that
11:34:59 exhibit.

11:35:02 **A.** I never said this to him.

11:35:17 **Q.** Is that from your Facebook account?

11:35:18 **A.** I haven't -- I have not spoken with Carl Robinson
11:35:22 since the story broke July twenty-fourth.

11:35:26 **Q.** You haven't spoken with -- it's your testimony that
11:35:28 you haven't spoken to Carl Robinson, communicated with him
11:35:31 in any fashion since July twenty-fourth?

11:35:34 **A.** That's right.

11:35:35 **Q.** Now, interestingly, were you following what was
11:35:40 going on during the investigation in July of 2014?

11:35:46 **A.** Was I -- I don't understand what you're saying.

11:35:49 **Q.** Were you following the news media accounts of the investigation into the disappearance of Heidi Allen in July of 2014?

11:35:56 **A.** I was trying to stay away from the news media.

11:35:58 MR. OAKES: Objection. What is the relevance, Your Honor?

11:36:01 THE COURT: Excuse me?

11:36:01 MR. OAKES: What's the relevance?

11:36:03 THE COURT: She answered the question. She said she's trying to avoid it.

11:36:05 THE WITNESS: I avoid the media.

11:36:07 **Q.** I didn't ask whether you avoided the media, were you reading what was in the media?

11:36:11 **A.** No, I was avoiding the media.

11:36:13 **Q.** So you didn't read anything at all what was happening in July of 2014?

11:36:17 **A.** I read the very first story that came out on that day.

11:36:21 **Q.** And did you read anything concerning the search of Rice Road?

11:36:26 **A.** No.

11:36:26 **Q.** You read nothing about that.

11:36:27 **A.** No.

11:36:28 **Q.** And again, when was it that you received the message from Roger Breckenridge?

11:36:41 A. March of 2014.

11:36:46 Q. And during the audio recording with Tonya Priest, did you acknowledge junking the van with Roger that was involved in the disappearance of Heidi Allen?

11:37:16 A. Do I acknowledge junking the van?

11:37:18 Q. Did you during the audio recording with Tonya Priest of March second of 2013 acknowledge junking the van with Roger Breckenridge?

11:37:26 A. I don't understand what you're saying. I don't --

11:37:30 Q. Was there a conversation during the March -- do you need to refresh your recollection?

11:37:34 A. Yes. I've got the phone conversation right here.

11:37:38 Q. Do you acknowledge that you talked about junking the van with Roger?

11:37:47 A. She talked about it.

11:37:49 Q. And did you agree that you helped Roger junk the van?

11:37:54 A. Uh huh. That's what I said.

11:38:02 Q. That's what you said?

11:38:03 A. That was my answer to her.

11:38:08 Q. And you talked about going to Florida before Jacob was born. Do you remember saying that during the audio?

11:38:15 A. Yes.

11:38:16 Q. And when was Jacob born?

11:38:20 A. September, 1996.

11:38:24 **Q.** Now, during your interview with Agent Pietroski, toward the end he wanted you to sign a statement, do you remember that?

11:38:43 **A.** Yes.

11:38:43 **Q.** And you didn't want to sign a statement?

11:38:47 **A.** I was leery of it.

11:38:58 **Q.** And were you leery of it because he had an audio recording of you?

11:39:02 **A.** No because of the state of confusion I was in at that point when he asked me to sign a statement.

11:39:07 **Q.** I'm going to see if it helps refresh your recollection regarding why you were concerned about --

11:39:12 THE COURT: She just answered your question. You don't like the answer, that's too bad. She said she was in a state of confusion.

11:39:18 MS.PEEBLES: Well, I didn't say I didn't like the answer, Judge.

11:39:21 THE COURT: You cannot go back and say I'm going to refresh your recollection of the question when she gave you an answer. She didn't say she forgot.

11:39:31 **Q.** Did you say you were concerned that they had you on that frickin tape and that's why you didn't want to sign the statement?

11:39:40 MR. OAKES: Objection.

MS. PEEBLES: It's already in evidence so the

11:39:40 Court's going to hear it anyway.

11:39:40 THE COURT: She already answered the question.

11:39:42 **Q.** So you're denying that you stated that. You're --
11:39:45 well, tell me again what you -- tell me what you said, why
11:39:47 you didn't want to sign a statement, just so I'm clear.

11:39:50 **A.** Because of the state of confusion I was in.

11:39:52 **Q.** And did you voice that you were confused with Agent
11:39:55 Pietroski during the course of that interview? Did you say
11:39:58 "I'm confused?"

11:40:00 **A.** Maybe. I don't remember.

11:40:03 **Q.** If you read through the transcript, would that
11:40:08 refresh your recollection about whether or not you ever
11:40:11 told him you were confused?

11:40:14 **A.** Well, I would have to say yeah, I was confused, if I
11:40:16 said I was eighteen when I was only seventeen, and I had
11:40:21 agreed to that with Mr. Pietroski.

11:40:21 **Q.** Did you tell Investigator Pietroski? Would it help
11:40:24 refresh your recollection about whether you ever told him
11:40:26 you were confused?

11:40:32 THE COURT: You have to answer the question.
11:40:33 Would it refresh your recollection or not?

11:40:35 **A.** I -- I don't know. I don't know because this is
11:40:37 just a transcript. I don't -- I mean I can look through it
11:40:41 and see if I said it but --

11:40:42 **Q.** Would it help if we played the audio interview of

11:40:46 you between yourself and Agent Pietroski?

11:40:48 **A.** I probably didn't tell him I was confused.

11:40:52 **Q.** In fact, you were fairly certain of where you were
11:40:58 on Easter morning of 1994?

11:41:01 MR. OAKES: Objection, Your Honor.

11:41:02 THE COURT: Sustained.

11:41:03 **Q.** When you were confronted with the audio recording by
11:41:19 Agent Pietroski, did you tell him you had nothing more to
11:41:24 say to him?

11:41:26 **A.** Yep. I believe I did, yes, I believe I did.

11:41:30 **Q.** And at that point were you attempting to invoke your
11:41:34 right to remain silent?

11:41:36 MR. OAKES: Objection, Your Honor.

11:41:38 THE COURT: What's your objection?

11:41:39 MR. OAKES: One, relevance, but secondly, even
11:41:43 if she -- if she had, that's her constitutional right
11:41:46 to invoke her right to remain silent.

11:41:48 THE COURT: Why is it relevant? She said
11:41:51 that --

11:41:51 MS. PEEBLES: I keep hearing whispering while
11:41:53 I'm trying to do my examination. It's distracting me.

11:41:57 THE COURT: Why is it relevant?

11:41:59 MS. PEEBLES: It's relevant simply because,
11:42:01 Your Honor, it goes to her state of mind when she was
11:42:03 willing to execute the statement with Mr. Pietroski.

11:42:06 THE COURT: No, I'm going to sustain.

11:42:09 **Q.** Were you concerned that you were on the recording
11:42:16 saying something different than what you were telling Agent
11:42:19 Pietroski?

11:42:19 **A.** Yes.

11:42:27 THE COURT: Would this be a good time to
11:42:28 break? She's been on the stand almost an hour and a
11:42:31 half.

11:42:31 MS. PEEBLES: That's fine, Judge.

11:42:32 THE COURT: It's quarter to twelve. Why don't
11:42:34 we come back at one. You have been on it a long time.
11:42:37 You have been at it a long time, so let's break now.
11:42:41 You can step down.

11:42:42 (Whereupon, there was a recess.)

12:58:10 THE COURT: Do you want to bring Ms. Wescott
12:58:12 back in? I'm assuming you're not done with her.

12:58:15 MS. PEEBLES: No, Judge.

12:58:21 THE COURT: Would you swear her in? Remain
12:58:24 standing just a second, okay?

12:58:28 THE CLERK: Raise your right hand, put your
12:58:30 left on the Bible.

JENNIFER WESCOTT, Called as a witness, having
12:58:38 been duly sworn, was examined and testified as follows:

12:58:38 THE CLERK: Please state your name for the
12:58:40 record.

12:58:40 THE WITNESS: Jennifer Wescott.

12:58:41 THE CLERK: Have a seat please.

12:58:42 THE WITNESS: Thank you

12:58:45 THE COURT: Ms. Wescott, I'm assuming you have
12:58:47 not changed your mind regarding being audio taped and
12:58:50 videotaped?

12:58:50 THE WITNESS: No, I do not want that.

12:58:52 THE COURT: Okay, thank you.

12:58:52 **Q.** Ms. Wescott, now I want to ask you again about your
12:58:57 March seventh, 2013 interview with Investigator Pietroski.

12:59:02 **A.** Okay.

12:59:03 **Q.** Now at that time you told him you didn't have any
12:59:07 information about Heidi Allen's disappearance, correct?

12:59:12 **A.** That's correct.

12:59:12 **Q.** And you told him you would tell him if you did,
12:59:16 correct?

12:59:16 **A.** Correct.

12:59:20 MS. BIANCO: Judge, we're having a hard time
12:59:23 hearing the witness back here.

12:59:25 THE COURT: Ma'am, could you pull the mike
12:59:28 closer to you? This is your chance to yell, okay?

12:59:31 **Q.** Now, what did you tell Investigator Pietroski about
12:59:39 any admissions Roger Breckenridge made to you in March of
12:59:43 2013?

12:59:48 MR. OAKES: Objection, Your Honor. I'm

12:59:51 slightly confused by the question, the way it's phrased.

12:59:54 THE COURT: I think what you're asking is on March of thirteen did she tell Pietroski anything about any statement Breckenridge said to her.

01:00:02 MS. PEEBLES: About Heidi Allen.

01:00:03 THE COURT: The way it was phrased like Breckenridge made a statement here in March of thirteen.

01:00:07 MS. PEEBLES: I'm sorry, that's not what I meant.

01:00:09 THE COURT: That's all right. Do you want to rephrase it?

01:00:10 MS. PEEBLES: Yes.

01:00:10 **Q.** In March of 2013 when you were being interviewed with Investigator Pietroski, what did you tell him about anything Roger Breckenridge told you or admitted to you regarding the disappearance of Heidi Allen?

01:00:26 **A.** I -- if I could get that transcript again. It's a long time.

01:00:32 **Q.** Would it be in your statement or would you want to see -- you could see both.

01:00:36 **A.** I -- I guess the statement's what matters. I mean the interview, what you're asking me about but --

01:00:47 MS. BIANCO: Judge, is the mike on because

01:00:48 we're still having a hard time hearing over here.

01:00:50 **A.** You know what --

01:00:57 **Q.** Here's the transcript and here's your statement.

01:01:33 **A.** What was the question again?

01:01:34 **Q.** On March seventh of 2013, what did you tell 01:01:41 Investigator Pietroski about any admissions Roger 01:01:45 Breckenridge made to you about Heidi Allen, her 01:01:48 disappearance or disposal of her body?

01:02:01 **A.** I didn't.

01:02:02 **Q.** You didn't. And at that time you told him if you 01:02:09 knew anything you would tell him?

01:02:11 MR. OAKES: Objection. I believe this has 01:02:13 been asked and answered.

01:02:15 THE COURT: Sustained.

01:02:16 **Q.** Now, in August of 2014, what -- when you were 01:02:22 interviewed by Agent Rojek and District Attorney Oakes, 01:02:27 what did you tell them about Roger's admissions regarding 01:02:31 the disposal of Heidi Allen's body?

01:02:36 **A.** I believe the only thing I said is that Roger had 01:02:43 bloated that all he knew was that she was burned in a wood 01:02:47 stove and taken care of in a van.

01:02:49 **Q.** Now that information you divulged in August of 2014, 01:02:57 at that interview, and that was the first time you 01:03:01 mentioned anything Roger said about the disposal of Heidi 01:03:04 Allen's body?

01:03:08 A. Yes.

01:03:09 Q. How long did you tell Investigator Rojek that you had been holding on to that information?

01:03:23 A. I'm sorry, could you repeat that?

01:03:26 Q. How long did you tell Investigator Rojek that you had been holding on to that information?

01:03:32 A. How long was I holding on to that information about the van?

01:03:35 Q. Yes.

01:03:36 A. Twenty years.

01:03:37 Q. When did Roger make these -- this admission to you?

01:03:53 MR. OAKES: Objection as to characterization.

01:03:54 THE COURT: No, I'll allow it.

01:03:57 A. He mentioned it at his mom's house in 1995.

01:04:02 Q. And were you nagging him to tell you what he knew?

01:04:06 A. Yes.

01:04:07 Q. Why?

01:04:08 A. He had just been questioned. I was new to it. I didn't know what was going on so I wanted to know.

01:04:19 Q. Now, during your interview with Agent Rojek in August of 2014, did you express any concerns about your own safety?

01:04:34 A. Yes.

01:04:36 Q. What were your concerns?

01:04:41 A. I just didn't want family drama for my children

01:04:45 because I'd gone back and talked.

01:04:50 Q. During that interview with Investigator Rojek and 01:05:04 District Attorney Oakes, did you claim you were intoxicated 01:05:11 during the audio recording with Tonya Priest?

01:05:14 A. Did I say I was drinking?

01:05:16 Q. No, intoxicated.

01:05:19 A. I stated I -- I believe I was drinking but we -- I 01:05:27 believe I did say that, yes.

01:05:29 Q. Drinking or intoxicated?

01:05:37 A. I don't remember.

01:05:40 Q. In your initial statement to Investigator Pietroski 01:05:50 that you have up there in front of you, did you state that 01:05:58 you would have known if James, Roger and Michael had 01:06:01 anything to do with Heidi Allen's disappearance?

01:06:04 MR. OAKES: Objection, Your Honor. Counsel's 01:06:07 basically leading her witness --

01:06:09 THE COURT: Sustained.

01:06:10 MR. OAKES: -- through the examination and --

01:06:12 THE COURT: I'll sustain the objection. It's 01:06:14 leading.

01:06:15 Q. Well, what did you say in your statement regarding 01:06:18 whether you would know if Michael Bohrer, Roger 01:06:23 Breckenridge or James Steen had anything to do with the 01:06:27 disappearance of Heidi Allen?

01:06:28 MR. OAKES: Objection, Your Honor. Counsel's

01:06:30 walking the witness through statements she made at
01:06:31 various points in time asking her what she said on
01:06:34 those occasions. I know counsel wants to try to show
01:06:38 the witness is making different statements at different
01:06:41 points in time, but it seems the appropriate way is to
01:06:43 ask her what she knows, what she saw, and if she says
01:06:48 something contrary to a prior statement, then impeach
01:06:52 her, but really this whole testimony so far hasn't been
01:06:54 about what she knows but about what she's told
01:06:56 investigators at different points. Can we get on to
01:06:59 what she knows?

01:07:01 MS. PEEBLES: Actually that was what she said
01:07:03 she knew at that time is what she put in the statement.

01:07:06 THE COURT: Well, the question's still
01:07:08 leading. The question's still leading and you've --
01:07:11 you have to ask some lead up question, some basic
01:07:15 questions before you get to that question. It's very
01:07:18 leading.

01:07:18 **Q.** When you gave that statement, the sworn statement,
01:07:21 to Investigator Pietroski, what did you say about Michael
01:07:32 Bohrer?

01:07:32 **A.** That I didn't meet him until 2007.

01:07:36 **Q.** Okay, did you say -- did Michael's name come up in
01:07:39 that statement anyplace else?

01:07:40 **A.** Yes. I would have known if James, Roger and Michael

01:07:44 had anything to do with the disappearance of Heidi.

01:07:46 Q. And why did you say that?

01:07:48 A. Because I knew two of the three of 'em and I just --
01:07:54 that's what I believe. I believe that if they had
01:07:56 something to do with it, I would have been at least told
01:07:58 about it.

01:07:59 Q. So did you just throw Michael's name in there with
01:08:02 James and Roger?

01:08:05 A. No, Tonya did.

01:08:06 Q. Excuse me. I'm asking about your sworn statement.

01:08:09 A. Yes.

01:08:12 Q. So in your sworn statement you use Michael's name
01:08:16 with James Steen and Roger Breckenridge?

01:08:18 MR. OAKES: Objection, Your Honor. Leading,
01:08:20 essentially asked and answered.

01:08:22 THE COURT: Sustained. You did ask and
01:08:24 answered.

01:08:25 Q. Now, you indicated that you were using cocaine back
01:08:32 when you were with Roger?

01:08:34 A. When I was with Roger for twelve years?

01:08:36 Q. Yes. When were you using cocaine?

01:08:41 A. In ninety-four and ninety-five.

01:08:43 Q. Now did you tell Investigator Rojek that you were
01:08:48 doing crazy things back then for cocaine?

01:08:52 MR. OAKES: Objection.

01:08:56 THE COURT: I don't think I understand the question.

01:08:57 THE WITNESS: No, I didn't either. That's -- I was going to ask her to repeat it.

01:09:01 MS. PEEBLES: Well, can I repeat the question?

01:09:04 THE COURT: Yeah.

01:09:05 **Q.** What were you doing for cocaine back when you were using cocaine back in 1994?

01:09:11 **A.** Babysitting five kids.

01:09:13 **Q.** So were you being paid in cocaine?

01:09:15 **A.** Sometimes.

01:09:17 **Q.** Now, I want to talk with you a little bit about your relationship with Roger. Did your relationship with Roger ever turn violent?

01:09:40 MR. OAKES: Objection.

01:09:42 THE COURT: Relevance?

01:09:44 MS. PEEBLES: Your Honor, I'd like to approach if I could please.

01:09:47 THE COURT: Sure.

01:09:49 (Whereupon, there was an off the record discussion at the bench).

01:12:16 THE COURT: Ms. Wescott, step out just for a minute with your attorney. There's going to be an offer of proof I don't think the witness should be privy to.

01:12:25 MR. CONNERS: Do you want me to go out with her?

01:12:27 THE COURT: You don't have to. It's up to you.

01:12:30 MR. CONNERS: Sure.

01:12:31 (Whereupon, the witness exits the courtroom).

01:12:34 THE COURT: Ms. Peebles and Ms. Bianco, based 01:12:36 upon our conference at the bench, the Court is at this 01:12:40 point hesitant to allow the line of questioning that 01:12:42 you're going to go down or want to go down. You want 01:12:44 to make an offer of proof? I'm assuming the DA is 01:12:46 going to want to be heard. Go ahead.

01:12:49 MS. PEEBLES: Yes, Judge.

01:12:49 THE COURT: Sure.

01:12:50 MS. PEEBLES: The offer of proof is as 01:12:51 follows. We have information, and she's made prior 01:12:53 statements during interviews with the investigators in 01:12:56 connection with the Heidi Allen disappearance, that she 01:13:00 has had a violent history with Roger Breckenridge. 01:13:05 He's come at her with an axe and has tried to choke her 01:13:09 out. She indicated she is afraid of Roger and what may 01:13:13 happen to her if he gets released based on things that 01:13:16 she's saying, admissions and anything that she says in 01:13:20 connection with the Heidi Allen case. Additionally, 01:13:23 she was instructed by Roger through Emma West to keep

01:13:27 her mouth shut as the Court's well aware, so taken in
01:13:30 combination, Your Honor --

01:13:31 THE COURT: But you had said you are not
01:13:32 offering it for the truth of the matter asserted.

01:13:35 MS. PEEBLES: Well, no, but it goes to her
01:13:36 state of mind and her fear, and her fear is -- is a
01:13:39 legitimate fear or concern based on her past history
01:13:42 with Roger Breckenridge, so that's how it all ties in,
01:13:44 Your Honor, and that's the basis for wanting to elicit
01:13:47 that testimony.

01:13:48 THE COURT: Okay, Mr. Oakes?

01:13:49 MS. BIANCO: Judge, I would just add one
01:13:50 thing. She made certain admissions to Tonya Priest,
01:13:53 and then she sought to restrict those admissions.
01:13:56 We're not trying to impeach her, we are just trying to
01:13:59 get out why she may want to be minimizing Roger's
01:14:03 involvement, and this is I think essential to our --

01:14:07 THE COURT: Roger's supposed involvement.

01:14:10 MS. BIANCO: Supposed involvement, but I
01:14:14 believe this is restricting our right to present a
01:14:17 defense for Mr. Thibodeau because you have a witness
01:14:20 who may very well be afraid of what happens, may very
01:14:23 well be afraid she's going to be retaliated upon, and I
01:14:26 think the fact that he's violent is not why we're
01:14:29 offering it, we're offering it to show why she may be

01:14:31 minimizing her testimony or trying to restrict what she
01:14:34 said to Tonya Priest.

01:14:35 THE COURT: Isn't that very speculative on
01:14:38 your part? Have you sat down and talked to her about
01:14:40 this?

01:14:41 MS. PEEBLES: Judge, we would be happy to talk
01:14:41 to Ms. Wescott, but she's denied us to talk to her so
01:14:44 we've never had the opportunity, but certainly based
01:14:47 on --

01:14:48 THE COURT: All the detail of the alleged
01:14:50 violent past that she had, can't you have a simple
01:14:53 question did you have a violent past with Roger?

01:14:56 MS. PEEBLES: Okay.

01:14:56 THE COURT: Because I think as much as the two
01:14:58 of you want to say you're not offering this for Roger
01:15:00 to be a violent person, I think that's exactly what
01:15:04 you're -- may not be your intention, but certainly is
01:15:06 the effect if you go into detail about that.

01:15:09 MS. PEEBLES: Yeah, I just --

01:15:11 THE COURT: Well, Mr. Oakes, your position?

01:15:13 MR. OAKES: I mean I share the Court's concern
01:15:15 or I have a concern that it's being offered one, to
01:15:19 demonstrate that Roger Breckenridge is a violent
01:15:21 person, but secondly, Ms. Wescott is their witness,
01:15:26 she's offered an explanation in describing what it is

01:15:30 she's heard from Mr. Breckenridge, what he supposedly admitted to saying to her, you know, the defense is presupposing that she's minimizing this and not fully giving all the details, and essentially what they're trying to do is impeach their own witness to show that she's not being forthcoming and fully disclosing. I mean additionally, when Ms. Peebles I believe already asked her about not wanting to talk about it, she had said essentially that she didn't want to create issues for her children because her children are Roger's children and she didn't want to create those issues, so now they're essentially trying to impeach that explanation by offering another one that sounds better.

01:16:10 MS. PEEBLES: Actually that's incorrect. That is --

01:16:11 THE COURT: I agree with Mr. Oakes in that you guys are presupposing something, that you guys are making a huge leap of faith that you don't have anything to substantiate it with, and you're trying to make your witness or make your client look as if she's not being truthful.

01:16:27 MS. PEEBLES: Well, actually --

01:16:28 THE COURT: Which is in fact impeaching your own witness.

01:16:30 MS. PEEBLES: No, I -- I don't think it's -- I

01:16:32 think it's understandable that she would be concerned 01:16:36 about divulging information because of her own safety 01:16:40 concerns, so Your Honor, that is not an effort on my 01:16:43 part to discredit her, it actually explains logically 01:16:48 why she would be reluctant, and I don't -- I'm not 01:16:52 criticizing her for that, I'm simply offering it as an 01:16:54 explanation as to why she would which is 01:16:56 understandable.

01:16:57 THE COURT: Mr. Oakes?

01:16:58 MR. OAKES: The point of this hearing though 01:17:01 is to determine what evidence will be admissible at 01:17:05 trial. The point of whether she had a violent history 01:17:08 with Mr. Breckenridge ultimately would go in front of a 01:17:12 jury. It's not an issue of it --

01:17:13 THE COURT: It doesn't speak as to whether or 01:17:15 not it's a declaration against penal interest. I'm 01:17:18 going to keep it out because it doesn't go to the 01:17:21 ultimate issue as to whether or not Mr. Breckenridge's 01:17:23 statements to her is admissible in this court so I'm 01:17:25 going to keep it out.

01:17:28 MS. PEEBLES: So no more questions about 01:17:30 violent --

01:17:30 THE COURT: About that. I mean you can have 01:17:32 more questions, but just not about that. Bring her 01:17:34 back in.

01:17:58 (Whereupon, the witness returns to the stand).

01:18:05 THE COURT: Ms. Wescott, you can have a seat.
01:18:08 You are still under oath, okay?

01:18:08 THE WITNESS: Okay.

01:18:09 THE COURT: Thank you. Go ahead, Ms. Peebles.

01:18:10 **Q.** Ms. Wescott, do you know a person named Deb Vecchio?

01:18:14 **A.** I do not.

01:18:15 **Q.** Never met her before?

01:18:17 **A.** No.

01:18:18 **Q.** Have you ever been to Rice Road?

01:18:19 **A.** No.

01:18:20 **Q.** Never?

01:18:22 **A.** I've been there to drop somebody off for a job,
01:18:25 that's it.

01:18:25 **Q.** What year was that?

01:18:26 **A.** 2007 or eight.

01:18:32 **Q.** And that's the only time you've ever been to Rice
01:18:35 Road?

01:18:35 **A.** Yes.

01:18:36 **Q.** And do you know whether your mother ever resided in
01:18:43 a trailer on Rice Road?

01:18:44 **A.** I know she never did.

01:18:48 **Q.** And you deny knowing Deb Vecchio?

01:18:51 **A.** Yes.

01:18:52 MR. OAKES: Objection. Asked and answered.

01:18:53 THE COURT: Asked and answered. Sustained.

01:18:55 **Q.** Ms. Wescott, have you been promised anything in
01:18:57 connection with your testimony here today?

01:19:00 MR. OAKES: Objection, Your Honor.

01:19:02 MS. PEEBLES: Why?

01:19:04 THE COURT: That's a legitimate question.
01:19:06 I'll allow it.

01:19:07 **A.** What was the question?

01:19:08 **Q.** Have you been promised anything in connection with
01:19:10 your testimony here today?

01:19:11 **A.** No.

01:19:12 **Q.** And do you recall telling Investigator Rojek that
01:19:26 you helped scrap things with Roger in the past?

01:19:29 **A.** Yes.

01:19:30 **Q.** What -- what would you scrap with Roger?

01:19:36 **A.** Anything from a small piece of tin to all the way up
01:19:43 to a vehicle or we've done trailer parks.

01:19:48 **Q.** And where would you scrap?

01:19:50 **A.** Everywhere. There was no specific spot.

01:19:55 **Q.** Did you ever scrap at Murtaugh's junkyard?

01:19:59 **A.** I have been family friends with them, yes, I take
01:20:03 junk to the Murtaugh's scrap yard.

01:20:05 **Q.** How long have you been friends with the Murtaughs?

01:20:07 **A.** I'm thirty-eight, so thirty-eight years.

01:20:10 **Q.** Have you had any recent contact with anyone from --

01:20:21 well, strike that. Have you had any contact or
01:20:23 conversations with Rich Murtaugh recently?

01:20:26 MR. OAKES: Objection, relevance.

01:20:29 THE COURT: I'll sustain it.

01:20:32 **Q.** When's the last time you have had any contact with
01:20:39 anyone from the Murtaugh's junkyard?

01:20:43 MR. OAKES: Objection, Your Honor. Seems kind
01:20:46 of far afield. Is this any employees at Murtaugh's or
01:20:50 talking Mr. Murtaugh.

01:20:51 THE COURT: Does this have anything to do with
01:20:57 Steen or Breckenridge allegedly said to her? Where are
01:21:01 we going with Murtaugh question?

01:21:03 MS. PEEBLES: Judge, this just goes to her
01:21:05 knowledge with the junkyard, her involvement with
01:21:07 Murtaugh's junkyard which we believe is where the van
01:21:10 was junked.

01:21:11 THE COURT: I'll sustain.

01:21:12 **Q.** So Ms. Wescott, do you acknowledge that the first
01:21:26 statement you gave to Investigator Pietroski was false in
01:21:30 March of 2013?

01:21:32 **A.** No.

01:21:34 **Q.** But you acknowledge that there was nothing in there
01:21:36 about Roger making any admissions to you?

01:21:38 MR. OAKES: Objection, Your Honor. I think
01:21:40 this line of inquiry has been asked and answered. It's

01:21:43 impeaching.

01:21:44 THE COURT: It has been. It has been. I'll
01:21:46 sustain.

01:21:47 MS. PEEBLES: Well, I can impeach with her
01:21:51 prior sworn statement, Judge.

01:21:53 THE COURT: If you have a prior sworn
01:21:55 statement, sure.

01:21:56 MS. PEEBLES: I do. She has it up on the
01:21:58 stand.

01:21:58 THE COURT: Haven't you already impeached with
01:22:00 her prior sworn statement?

01:22:01 MS. PEEBLES: I guess I'd like to offer it at
01:22:03 this point.

01:22:03 THE COURT: The statement?

01:22:04 MS. PEEBLES: Yes. It's actually already in
01:22:05 evidence.

01:22:05 THE COURT: I was going to say it's already
01:22:07 in.

01:22:07 MS. PEEBLES: It's already in evidence. Thank
01:22:09 you. I have nothing further. Well, wait a second.

01:22:12 (Whereupon, there was a pause in the
01:22:24 proceeding.)

01:22:24 **Q.** What did you tell investigators about your fear when
01:22:29 Roger is released from prison?

01:22:31 MR. OAKES: Objection, Your Honor. It goes to

01:22:34 essentially the same issue.

01:22:36 THE COURT: Sustained. It's no different.

01:22:37 MS. PEEBLES: No further questions.

01:22:38 THE COURT: Will the attorneys please
01:22:40 approach?

(Whereupon, there was an off the record
discussion at the bench).

01:23:19 THE COURT: Mr. Oakes?

01:23:21 MR. OAKES: Yes, Your Honor.

01:23:22 CROSS-EXAMINATION

01:23:23 BY MR. OAKES:

01:23:24 **Q.** Good afternoon, Ms. Wescott.

01:23:52 **A.** Hi, Mr. Oakes.

01:23:53 **Q.** Where were you living on Easter Sunday of 1994?

01:23:59 **A.** County Route 38, Hastings.

01:24:02 **Q.** Who were you living with?

01:24:03 **A.** My parents, Sharon and Paul Wescott.

01:24:06 **Q.** Do you have any brothers or sisters?

01:24:09 **A.** There was eleven of us.

01:24:11 **Q.** Would any of them have been living in the house at
01:24:14 that time period?

01:24:15 **A.** Yes. My younger sister Missy was and my younger
01:24:18 sister Jessica was.

01:24:20 **Q.** Now, in 1994, April of 1994, how old would you have
01:24:25 been, Jennifer?

01:24:26 A. Seventeen.

01:24:26 Q. Were you enrolled at school at that time?

01:24:29 A. Not at that time.

01:24:31 Q. Had you been enrolled in school during the 1993/94
01:24:36 school year?

01:24:36 A. Yes.

01:24:37 Q. And what grade were you in at that time?

01:24:40 A. I was in tenth grade.

01:24:42 Q. And at some point you stopped attending school that
01:24:46 year?

01:24:46 A. Yes.

01:24:46 Q. And when was that?

01:24:48 A. I think it was January -- March, it was March I
01:24:55 dropped out the first time.

01:24:57 Q. Okay, and when you dropped out at that time did you
01:25:00 start working?

01:25:01 A. Yes.

01:25:02 Q. Where were you working?

01:25:03 A. Burger King in North Syracuse.

01:25:06 Q. And how long did you work there for, Jennifer?

01:25:08 A. A couple months.

01:25:09 Q. And where were you residing while you were working
01:25:11 at Burger King?

01:25:12 A. County Route 38, Hastings.

01:25:14 Q. With your parents?

01:25:15 A. With my parents.

01:25:16 Q. Now, Ms. Peebles asked you a question about Rice Road. Did your mom or your dad ever live on Rice Road in the Town of Mexico?

01:25:25 A. No.

01:25:27 Q. Have any of your relatives lived on Rice Road in the Town of Mexico?

01:25:31 A. No.

01:25:31 Q. Have you ever stayed the night or spent the night at a residence on Rice Road in the Town of Mexico?

01:25:39 A. No.

01:25:39 Q. Now when did you first meet Roger Breckenridge?

01:25:48 A. It was either summer, early fall of 1994 I started babysitting for him.

01:25:54 Q. And did you start babysitting -- well, the time that you started babysitting for Roger, where did he live?

01:26:00 A. Kenyon Road.

01:26:01 Q. At the town of --

01:26:02 A. Mexico.

01:26:03 Q. And was he married at the time?

01:26:05 A. Yes.

01:26:05 Q. To who?

01:26:05 A. Tracey Breckenridge.

01:26:07 Q. And how many kids did he have at that time?

01:26:10 A. Five.

01:26:11 Q. And how often were you babysitting for Roger and
01:26:15 Tracey during that time period?
01:26:16 A. What time period?
01:26:18 Q. During say the fall of ninety-four.
01:26:22 A. Sometimes it was a couple days a week, sometimes it
01:26:25 was four or five days a week.
01:26:26 Q. Now during that time period during the fall of
01:26:30 ninety-four, Ms. Peebles asked you some questions about how
01:26:35 you were paid. Were you paid in money sometimes?
01:26:37 A. Yes.
01:26:38 Q. Were you paid in alternative forms other than money
01:26:42 at times?
01:26:42 A. Yes.
01:26:43 Q. What were those alternative forms?
01:26:44 A. Drugs, alcohol.
01:26:49 Q. And who provided that to you?
01:26:49 A. Roger, Tracey.
01:26:50 Q. Do you know where they acquired those drugs?
01:26:54 A. I do not.
01:26:54 Q. And during the fall of ninety-four, what was the
01:27:01 nature of your relationship with Roger Breckenridge?
01:27:04 A. In the fall of ninety-four?
01:27:05 Q. Fall of ninety-four.
01:27:06 A. I was just babysitting.
01:27:08 Q. Okay, at some point did you move from being a

01:27:11 babysitter to having more intimate relationship with Roger
01:27:14 Breckenridge?

01:27:15 **A.** In February of ninety-five.

01:27:17 **Q.** And when is your birthday Jennifer?

01:27:20 **A.** February seventeenth, 1977.

01:27:23 **Q.** So in February of ninety-five, you turned eighteen
01:27:26 years old.

01:27:27 **A.** Yes.

01:27:27 **Q.** Do you recall your eighteenth birthday?

01:27:30 **A.** Yes.

01:27:30 **Q.** And how is it that you recall your eighteenth
01:27:32 birthday, Jennifer?

01:27:36 **A.** It was the eight ball birthday.

01:27:41 **Q.** When you say eight ball birthday, can you please
01:27:44 tell the Court what you mean?

01:27:46 **A.** We went and bought an eight ball of coke and we sat
01:27:50 there and sniffed it.

01:27:52 **Q.** And who did you do that with?

01:27:54 **A.** There was several people there, but Roger, Tracey.

01:27:58 **Q.** And on your eighteenth birthday, did you have a
01:28:04 physical intimate relationship with Roger on your
01:28:06 eighteenth birthday?

01:28:07 **A.** Yes.

01:28:08 **Q.** Was that the first time you had had a physical
01:28:10 relationship with Roger?

01:28:11 **A.** Yes.

01:28:11 **Q.** But he was still married to Tracey at that time,
01:28:17 correct?

01:28:17 **A.** Yes.

01:28:17 **Q.** How was it you came to have a physical relationship
01:28:21 with Roger while he was married to Tracey?

01:28:24 **A.** His wife asked me to.

01:28:25 **Q.** Was she present when this occurred?

01:28:30 **A.** Yes.

01:28:30 **Q.** And at some point after your eighteenth birthday in
01:28:34 February of ninety-five, did you and Roger Breckenridge
01:28:37 start having an intimate relationship basically where you
01:28:43 became more like boyfriend/girlfriend?

01:28:45 **A.** That's -- yes. After that date it was just Roger
01:28:49 and I, yes.

01:28:50 **Q.** And at some point after that birthday did Roger
01:28:54 eventually leave Tracey?

01:28:56 **A.** Tracey left with the kids, yes.

01:28:58 **Q.** Okay, and when Tracey left with the kids, where was
01:29:01 Roger living at that point?

01:29:03 **A.** He moved in with his mother.

01:29:04 **Q.** And where was that?

01:29:06 **A.** She lived over on Leavitt Road.

01:29:09 **Q.** What township was that?

01:29:11 **A.** That's New Haven.

01:29:12 **Q.** And when -- when approximately if you know the month or year when Roger moved over to his mom's off of Kenyon Road?

01:29:21 **A.** It was February, ninety-five.

01:29:22 **Q.** And at some point did he move from that residence over to living with his mom over in Parish?

01:29:35 **A.** Yes.

01:29:36 **Q.** And when was that?

01:29:37 **A.** That was ninety -- that was the middle to end of ninety-five 'cause by Christmas we were living at my parents' house for ninety-five.

01:29:46 **Q.** When you say your parents' house, you mean the house on County Route 38?

01:29:50 **A.** Yes.

01:29:50 **Q.** How long have your parents lived at that address?

01:29:52 **A.** My entire life. Thirty-eight years.

01:29:56 **Q.** Did they ever have a point where they were making renovations to the house where they moved out of the residence?

01:30:02 **A.** No. We lived in the trailer until the house was completed right there on the same property.

01:30:08 **Q.** On Easter Sunday of 1994, you were seventeen years old?

01:30:18 **A.** Yes.

01:30:19 **Q.** Jennifer, do you recall where you were on that

01:30:22 specific Easter morning?
01:30:23 **A.** My mom's.
01:30:24 **Q.** And what were you doing at your mom's?
01:30:27 **A.** Helping her prepare dinner.
01:30:29 **Q.** Would any of other family members have been there?
01:30:32 **A.** Oh, yes.
01:30:33 **Q.** Who else?
01:30:35 **A.** There's -- there was eleven of us, so I would have
01:30:37 to say at least seven of us children plus my father.
01:30:41 **Q.** So essentially your immediate family members of some
01:30:47 form or another?
01:30:48 **A.** Yes.
01:30:48 **Q.** Jennifer, Ms. Peebles has asked you about a
01:31:00 telephone call that you had with Tonya Priest on or about
01:31:04 March second of 2013. Do you recall that line of
01:31:08 questioning?
01:31:08 **A.** Yes.
01:31:08 **Q.** And you've listened to that phone call before,
01:31:12 correct?
01:31:12 **A.** Yes.
01:31:12 **Q.** And you've listened to it in parts at the Sheriff's
01:31:18 Department?
01:31:18 **A.** Yes.
01:31:18 **Q.** And at one point in Mr. Lanza's office?
01:31:22 **A.** Yes.

01:31:23 **Q.** And again, that's the phone call that's been online
01:31:25 and in the media, correct?
01:31:26 **A.** Yes.
01:31:27 **Q.** Now, before that conversation that's in that
01:31:32 recording, you had another conversation with Tonya Priest?
01:31:36 **A.** Yes, the night before.
01:31:38 **Q.** And how long was that conversation?
01:31:41 **A.** I don't -- I don't recall that conversation. I
01:31:45 recall talking to her, but I don't recall what was said or
01:31:47 how long it was.
01:31:48 **Q.** And have you ever heard a recording of that
01:31:59 conversation?
01:31:59 **A.** No.
01:32:00 **Q.** And to your knowledge, does a recording of that
01:32:04 conversation exist anywhere?
01:32:06 MS. PEEBLES: Objection.
01:32:08 THE COURT: I'll allow it.
01:32:09 MS. PEEBLES: Well, first of all, there's been
01:32:11 no testimony that it was recorded.
01:32:12 THE COURT: She says yes or no, it's done, you
01:32:14 know, so --
01:32:15 **A.** I'm sorry, could you repeat that again?
01:32:18 THE COURT: I'm not sure how much weight the
01:32:20 answer has, Ms. Peebles.
01:32:22 MS. PEEBLES: I'm sorry?

01:32:23 THE COURT: I'm not sure how much weight the answer has.

01:32:25 MS. PEEBLES: Okay.

01:32:26 **Q.** Jennifer, you never been presented with a transcript of that first conversation with Tonya, correct?

01:32:34 **A.** Correct.

01:32:34 **Q.** And during that first conversation with Tonya, you said you don't remember it. Were you under the influence of any substances during that first telephone call?

01:32:44 **A.** Yes.

01:32:44 **Q.** Okay, what substance or substances were that?

01:32:47 **A.** I was drinking Captain Morgan while my son was at his dance.

01:32:52 **Q.** And during that first conversation with Tonya, would you have been intoxicated or did you have your faculties about you?

01:32:59 **A.** I was pretty close to intoxicated.

01:33:03 **Q.** So because of that intoxication, you don't really recall what was discussed. Jennifer, do you still have the transcript of your conversation with Tonya in front of you?

01:33:36 **A.** No, I have the police interview.

01:33:38 **Q.** Okay.

01:33:38 **A.** And my statement.

01:34:05 MR. OAKES: May I approach, Your Honor?

01:34:06 THE COURT: Sure.

01:34:07 **Q.** Jennifer, I'm going to ask you to look at the first
01:34:15 page and the top of the second page of that transcript,
01:34:20 just review it silently to yourself.

01:34:22 THE COURT: Is this the phone call transcript?

01:34:24 MR. OAKES: The phone call transcript, yes,
01:34:27 Your Honor.

01:34:42 **Q.** Are you all set, Jennifer?

01:34:44 **A.** Yes.

01:34:45 **Q.** And I'm looking at that phone call. Tonya Priest,
01:34:51 essentially when you began talking with her that night,
01:34:54 essentially was hey, how are you doing, how are the kids,
01:34:58 what have you been up to, those types of conversations,
01:35:01 correct?

01:35:01 **A.** Yes.

01:35:02 **Q.** And then Tonya jumps to yeah, Tonya says, "Yeah, I
01:35:12 just want you to know that, you know, I don't hate you for
01:35:15 what they did to her, you know." That was Tonya saying
01:35:19 that to you?

01:35:20 **A.** That's Tonya saying that to me, yes.

01:35:22 **Q.** So in that phone call, Tonya was the first person to
01:35:26 bring up the topic of Heidi Allen in that whole -- that
01:35:31 whole area of conversation, correct?

01:35:32 **A.** Yes.

01:35:33 **Q.** Now when she brought that up, did you know what she
01:35:37 was talking about?

01:35:38 A. No.

01:35:38 Q. Had you had any discussion with her either -- discussion with her or text messages with her regarding that topic area?

01:35:47 A. Yes, but I didn't recall them.

01:35:53 Q. But you didn't recall them?

01:35:55 A. But I didn't recall them, yes.

01:35:55 Q. Now again, Ms. Peebles has talked to you quite a bit about that phone call. Jen, in listening to that phone call of you in the transcript, would you agree that you make statements in there that seem to indicate you know something about Heidi Allen?

01:36:15 A. Say that one more time. I'm sorry.

01:36:17 Q. Okay, in listening to that phone call, reading that transcript -- well, let me rephrase. During that phone call, Tonya makes references to Heidi Allen and a van, is that correct?

01:36:46 A. Yes.

01:36:46 Q. And at times you respond to her saying uh huh or yeah or words to that effect, would you agree with that?

01:36:54 A. Yes.

01:36:55 Q. Why did you give those responses to Tonya? Can you explain those responses for us?

01:37:04 A. I lied to her. I was just -- I always gave her the attention -- she always called, any time I talked to her,

01:37:17 she wanted attention, I gave her that attention. I was
01:37:19 just following what she was saying.

01:37:22 **Q.** When you said she was calling and wanting attention,
01:37:25 what do you mean? Can you explain that further?

01:37:27 **A.** She was -- she always wanted to be the center of
01:37:30 attention.

01:37:32 **Q.** Jennifer, at times, though, they asked you about
01:37:47 having her in the van, and at one point, I think it's going
01:37:50 to be on page five, Tonya asked you -- I'll let you get to
01:37:54 that page. Sorry.

01:37:56 MS. PEEBLES: Can you please speak up? I'm
01:37:58 sorry, I can hardly hear you again.

01:37:59 THE COURT: You're live.

01:38:02 MR. OAKES: I'll try to keep my voice up,
01:38:04 sorry.

01:38:05 **Q.** At one point Tonya asked you, "What do they do, just
01:38:08 leave her in the van when they got to your house." You
01:38:11 responded, "Yeah." Tonya asked you, "Who actually freaking
01:38:15 killed her?" You responded, "I have no idea. It didn't
01:38:19 happen around me." Do you see that portion, Jen?

01:38:24 **A.** Yes.

01:38:25 **Q.** Can you explain to the Court why you gave those
01:38:29 responses to Tonya to that line of questioning?

01:38:34 **A.** That it didn't happen around me? Or that she -- she
01:38:39 was never brought to my home in a van so that was just a

01:38:42 lie. I lied to Tonya a lot in this conversation.
01:38:46 **Q.** Okay. During this conversation with Tonya, you
01:38:56 indicated that you were eighteen years old at the time,
01:38:59 correct, during this phone call?
01:39:01 **A.** Yes.
01:39:02 **Q.** When did you actually turn eighteen?
01:39:04 **A.** February of 1995.
01:39:08 MS. PEEBLES: Asked and answered. We have
01:39:10 gone through this.
01:39:12 THE COURT: I'm assuming this is the last time
01:39:14 he'll ask that question.
01:39:16 MR. OAKES: Yes.
01:39:17 **Q.** Jennifer, you talked earlier about being essentially
01:39:22 confused during this conversation.
01:39:26 MS. PEEBLES: Your Honor, I don't believe that
01:39:29 was her testimony.
01:39:29 THE COURT: It was not her testimony. She
01:39:31 said she was in a state of confusion in her
01:39:33 conversation in the interview with investigator --
01:39:36 THE WITNESS: Pietroski.
01:39:37 THE COURT: Pietroski. Thank you.
01:39:39 **Q.** Okay. Now Jennifer, during that same phone call, I
01:40:00 think it's going to be -- it's the bottom of page seven on
01:40:04 my copy, I'm not sure if it's the same on yours, where you
01:40:09 talked about they swarm Grandma Breckenridge's house?

01:40:14 **A.** Yep.

01:40:14 **Q.** Do you see that portion?

01:40:15 **A.** Yes.

01:40:16 **Q.** And your words were, "They swarmed Grandma 01:40:20 Breckenridge's house, fuckin' Town of Parish, blue house, 01:40:25 when she lived there. They swarmed Larry's apartment next 01:40:27 door." And you continued, "I would never ever -- when I 01:40:32 fuckin' didn't show up for that subpoena, this is the first 01:40:35 time that I talked about it since then." Then Tonya to 01:40:39 you, "What the heck? Subpoena I mean." And you say, "I 01:40:44 was subpoenaed into court for the trial." And Tonya says, 01:40:48 "Oh, were you really?" And you responded, "Yeah, and I 01:40:52 didn't go. Me and Roger both were." Tonya asked you then, 01:40:56 "For what?" You respond, "Testify for the Thibodeau." 01:41:02 Tonya asked you, "Do you know them guys?"

01:41:04 MS. PEEBLES: Judge, I'm going to object. Is 01:41:05 there a question being posed?

01:41:07 THE COURT: I'm wondering if a question's 01:41:09 going to come about.

01:41:10 MR. OAKES: Well, it's that section, Your 01:41:12 Honor.

01:41:12 THE COURT: Okay.

01:41:12 **Q.** You indicate there that you were subpoenaed to go to 01:41:16 Court to testify for the Thibodeaus? That's --

01:41:20 **A.** Yes.

01:41:21 **Q.** -- what you told Tonya that night?

01:41:24 **A.** Tonya, yes.

01:41:25 **Q.** You told Ms. Peebles you've never met the Thibodeaus, you don't know Gary Thibodeau?

01:41:30 **A.** (Shakes head.)

01:41:31 **Q.** You don't know his brother Richard Thibodeau?

01:41:35 **A.** Never met either one of them.

01:41:39 **Q.** Were you actually subpoenaed to go into court for either of the Thibodeaus?

01:41:41 **A.** That's a lie. I wasn't.

01:41:42 **Q.** Why did you say that you were subpoenaed to go to testify for the Thibodeaus?

01:41:50 **A.** I told Tonya a lot of lies as I said.

01:41:53 **Q.** Well, continuing just a little ways down from there, Jennifer.

01:41:57 **A.** Okay.

01:41:58 **Q.** Tonya asked you at one point, "You don't know which one killed her though," and you responded, "No idea. As far as I know, Thibodeau." That was the response that you gave to Tonya that night?

01:42:11 **A.** Yes.

01:42:12 **Q.** Why did you give that response?

01:42:14 **A.** Because the only thing I know is what I've seen on TV.

01:42:18 **Q.** Jennifer, you're not claiming to have any personal

01:42:21 knowledge of Gary Thibodeau's guilt or innocence are you?
01:42:24 **A.** No.
01:42:24 **Q.** So again, when you talked about it there, again, you
01:42:29 were just talking nonsense?
01:42:31 MS. PEEBLES: Judge, I'm going to object to
01:42:33 that characterization.
01:42:34 THE COURT: I'll sustain it.
01:42:38 **Q.** That statement about knowing the Thibodeaus, you
01:42:44 didn't have any personal knowledge of that to make that
01:42:47 statement, correct?
01:42:47 **A.** That's correct.
01:42:49 **Q.** It was something you had fabricated or made up?
01:42:52 **A.** Yes.
01:42:52 **Q.** Was that fabricated and made up in the same way
01:42:57 other portions of that conversation were?
01:42:58 **A.** Yes.
01:42:59 **Q.** Jennifer, after you spoke with Tonya, you were
01:43:14 contacted by Investigator Pietroski and asked to come in to
01:43:17 the Sheriff's Department weren't you?
01:43:18 **A.** Yes.
01:43:19 **Q.** You voluntarily went to the Sheriff's Department.
01:43:22 **A.** Yes.
01:43:23 **Q.** You weren't in custody?
01:43:25 **A.** No.
01:43:25 **Q.** They didn't drag you in in handcuffs?

01:43:30 **A.** No.

01:43:30 **Q.** And you talked with Investigator Pietroski at that time?

01:43:32 **A.** Yes.

01:43:33 **Q.** And you gave a written statement to Investigator Pietroski on that day?

01:43:38 **A.** Yes.

01:43:38 **Q.** And that was March seventh, 2013?

01:43:41 **A.** Yes.

01:43:44 **Q.** And in August of 2014, you met with Investigator Rojek at the Sheriff's Department as well?

01:44:05 **A.** Yes.

01:44:05 **Q.** And actually Investigator Rojek and myself picked you up at your trailer, correct?

01:44:10 **A.** Yes.

01:44:11 **Q.** You voluntarily went with us to the Sheriff's Department?

01:44:14 **A.** Yep.

01:44:14 **Q.** And you met with both of us for an interview?

01:44:17 **A.** Yes.

01:44:17 **Q.** And it lasted a few hours didn't it?

01:44:20 **A.** Yes.

01:44:21 **Q.** And at the end of that interview, you gave a statement didn't you?

01:44:25 **A.** Yes.

01:44:26 **Q.** Jennifer, Ms. Peebles asked you -- I believe Ms.
01:44:36 Peebles asked you in August when you were meeting with
01:44:38 Investigator Rojek, and he asked you to sign a statement,
01:44:42 did you have concerns at that time that you might get in
01:44:45 trouble legally because you had given another statement to
01:44:48 Investigator Pietroski back in March of 2013?

01:44:52 **A.** No.

01:44:53 **Q.** You didn't think you were potentially going to be in
01:44:55 trouble?

01:44:55 **A.** (Shakes head.)

01:44:56 **Q.** Well, when Investigator Rojek spoke with you, what
01:45:04 did he tell you he wanted from you during that interview?

01:45:07 **A.** The best.

01:45:08 MS. PEEBLES: Objection, it's hearsay.

01:45:10 THE COURT: Sustained.

01:45:12 **Q.** What was your understanding of what was being asked
01:45:15 of you?

01:45:16 MS. PEEBLES: Objection.

01:45:19 THE COURT: No, I'll allow it.

01:45:21 MS. PEEBLES: What was being asked?

01:45:24 THE COURT: Who is beeping? Make sure cell
01:45:29 phones are off please. Ask the question again.

01:45:37 **Q.** What was your understanding what Investigator Rojek
01:45:40 wanted from you during your August, 2014 interview?

01:45:43 **A.** The truth.

01:45:44 THE COURT: I'll allow that question.

01:45:45 **A.** The truth.

01:45:46 **Q.** And during that interview, I can't remember if it
01:45:52 was Investigator Rojek or myself, we told you we wanted to
01:45:55 find out what happened.

01:45:57 **A.** Yes.

01:45:58 **Q.** And during that conversation, at some point during
01:46:03 the interview essentially told you that if Gary Thibodeau
01:46:07 was innocent, we wanted to figure that out?

01:46:09 **A.** Yes.

01:46:09 **Q.** And we wanted you to give us information even if it
01:46:12 meant showing that he was innocent?

01:46:13 **A.** Yes.

01:46:14 **Q.** And during that conversation, as a result of that
01:46:19 conversation, there were veiled statements Roger made to
01:46:24 you essentially for the first time revealing that to law
01:46:27 enforcement at that point.

01:46:28 **A.** That's correct.

01:46:29 **Q.** And what were the statements that Roger had made to
01:46:32 you?

01:46:32 **A.** He had just said that it was all crazy, he -- it was
01:46:38 all crazy, she was burned in a wood stove and taken care of
01:46:42 in a van.

01:46:44 **Q.** Now did Roger tell you that he had kidnapped Heidi
01:46:49 Allen?

01:46:49 MS. PEEBLES: Objection, Judge.

01:46:51 THE COURT: What's the objection?

01:46:52 MS. PEEBLES: Well, I think he's -- she's
01:46:54 already testified about what he said.

01:46:57 THE COURT: No, no, this is more questions
01:47:00 about what he asked. I'll allow it.

01:47:02 **A.** Sorry, what was it?

01:47:04 **Q.** Did Roger tell you that he personally kidnapped
01:47:07 Heidi Allen?

01:47:08 **A.** No.

01:47:08 **Q.** Did he tell you that he personally killed Heidi
01:47:11 Allen?

01:47:11 **A.** No.

01:47:12 **Q.** Did he tell you that he was personally involved in
01:47:15 the disposal of Heidi Allen's body?

01:47:18 **A.** No.

01:47:19 **Q.** His words were essentially that all he knows is she
01:47:27 was burned up in a stove and disposed of in a van?

01:47:30 **A.** That's it.

01:47:32 **Q.** Did he explain to you how he knew that information?

01:47:35 **A.** No.

01:47:36 **Q.** Did he tell you that he had personally witnessed
01:47:39 these acts occur?

01:47:40 **A.** No.

01:47:40 **Q.** Did he tell you that he was personally involved in

01:47:43 those acts occurring?

01:47:44 **A.** No.

01:47:45 **Q.** As far as you know, he could have been repeating a
01:47:48 rumor that he'd heard.

01:47:50 MS. PEEBLES: Objection, speculation.

01:47:52 THE COURT: Sustained.

01:47:53 **Q.** Okay. That conversation, when Roger told you those
01:47:59 things, where did that occur, Jennifer?

01:48:01 **A.** Upstairs in his mother's house in Parish.

01:48:03 **Q.** The blue house on 69A?

01:48:06 **A.** Yes.

01:48:06 **Q.** And when was that?

01:48:08 **A.** After he was in -- talked to from whoever showed up,
01:48:13 the sheriffs or whoever he talked to when he was
01:48:16 interrogated.

01:48:18 **Q.** And I believe you told this already, that was in
01:48:20 1995 or sometime in 1995?

01:48:23 **A.** Yes, that was ninety-five.

01:48:25 **Q.** On any other occasions other than what you just
01:48:52 described, did Roger Breckenridge make any statements
01:48:55 regarding Heidi Allen?

01:48:56 **A.** No.

01:48:57 **Q.** At any point in the last twenty years have you ever
01:49:09 heard James Steen make statements regarding Heidi Allen?

01:49:13 **A.** No.

01:49:14 **Q.** And again, you have known James Steen since you were
01:49:19 a teenager I believe you indicated?

01:49:21 **A.** Just before I turned eighteen, yep, just before I
01:49:24 met Roger, before I started babysitting for Roger.

01:49:31 **Q.** And you first met Michael Bohrer when he was running
01:49:34 a computer shop, the Medspar shop?

01:49:38 **A.** Yes, next to the railroad tracks in Parish.

01:49:41 **Q.** That was sometime in the two-thousands when you met
01:49:44 him?

01:49:44 **A.** 2006, 2007. I was living in Parish.

01:49:47 **Q.** That's your best recollection?

01:49:48 **A.** Yes.

01:49:49 **Q.** Did you know Michael Bohrer back in 1994?

01:49:53 **A.** No.

01:49:53 **Q.** Back in 1994 when you first met Roger Breckenridge,
01:49:58 did he have a vehicle at that time?

01:50:00 **A.** He was driving a red Bonneville.

01:50:03 **Q.** And at that time you know James Steen. Do you know
01:50:06 if he had a vehicle during that time period?

01:50:08 **A.** I'm not sure what he was driving.

01:50:12 **Q.** Now Jennifer, Ms. Peebles asked you some questions
01:50:25 about communications you had with -- well, showed you some
01:50:32 printouts from communications that you had, supposedly had
01:50:35 with Carl Robinson via Facebook via the Internet. Do you
01:50:39 remember those?

01:50:40 **A.** Yes.

01:50:40 **Q.** Did you make those communications to Carl Robinson?

01:50:43 **A.** Absolutely not.

01:50:44 **Q.** Now during that time period, she had asked you about communications you had with Emma West during 2014 prior to the news report coming out in the newspaper.

01:51:04 THE COURT: Emmie West, right?

01:51:07 MR. OAKES: Emmie West. Did I say Emma? Okay.

01:51:10 THE COURT: Just want to make sure.

01:51:11 **Q.** And did you have a communication with Emmie or Emma West at that time?

01:51:15 **A.** It was a message. It didn't come right out of her mouth to me, no, it came via message from her.

01:51:25 **Q.** And around that time, were you getting requests or inquiries from the newspaper regarding this?

01:51:32 **A.** Yes.

01:51:32 **Q.** And you had talked about some text messages you had with Mr. Storto --

01:51:40 **A.** Yes.

01:51:40 **Q.** -- I believe it was. And during these -- during these text messages with Mr. Storto, were you concerned about the newspaper inquiries and what was being put on the media?

01:51:53 **A.** Yes.

01:51:54 **Q.** Why was that?

01:51:55 **A.** I feel -- I felt harassed with the way things were in the paper. People that don't know me, they -- first impression is the Post-Standard.

01:52:11 **Q.** Wait. What was that about the Post-Standard? I'm sorry.

01:52:14 **A.** I said my first impression people that don't know me is the Post-Standard?

01:52:21 **Q.** Okay, Jennifer, you realize that Mr. Thibodeau has been in prison for almost twenty years now for the kidnapping of Heidi Allen.

01:52:41 **A.** Yes.

01:52:42 **Q.** If he is innocent of this crime, that needs to come out in this court today. Do you have any information that would show that somebody other than Mr. Thibodeau committed this offense?

01:52:56 **A.** No.

01:52:59 **Q.** Jennifer, if other people helped Mr. Thibodeau or helped and assisted in kidnapping or killing or disposing of Heidi, that needs to come out in this courtroom today too. Do you have any other information regarding who was involved in the kidnapping and killing of Heidi Allen?

01:53:20 **A.** No.

01:53:21 **Q.** Jennifer, at a prior conversation, I think I told you I met with Sue and Ken Allen, Heidi's parents, 01:53:31 talking --

01:53:32 MS. PEEBLES: Judge, objection, relevance.

01:53:33 THE COURT: Yeah. Where are we going with
01:53:35 this? Well, answer my question before you ask her a
01:53:38 question.

01:53:38 MR. OAKES: Certainly. I was going to move on
01:53:40 to a different question, Your Honor.

01:53:41 THE COURT: Okay.

01:53:42 **Q.** Jennifer, do you have any information regarding
01:53:49 where Heidi Allen's body is presently?

01:53:52 **A.** No.

01:53:52 **Q.** Do you have any personal information that could
01:53:55 assist law enforcement in recovering that young girl's
01:53:58 body?

01:53:59 **A.** No.

01:53:59 **Q.** If you had that information, would you share it?

01:54:04 **A.** Would have a long time ago.

01:54:06 **Q.** Well, you didn't -- you told us about certain
01:54:11 statements Roger made to you almost twenty years ago now
01:54:15 and you didn't share that information with law enforcement
01:54:17 initially did you?

01:54:18 **A.** No.

01:54:18 **Q.** And actually it took quite a bit of questioning for
01:54:23 you to tell us that, right?

01:54:24 **A.** Yes.

01:54:24 **Q.** So Jennifer, I've got to ask then, is that everything you know?

01:54:29 **A.** That's everything I know.

01:54:31 **Q.** If you had other information that could lead to the recovery of Heidi Allen, would you tell us?

01:54:38 **A.** Yes, I would.

01:54:39 **Q.** Why?

01:54:40 **A.** Because I feel it would need to be -- I would probably because I'm a mom and I would want to know myself but morally it would -- that would be the right thing to do.

01:54:58 **Q.** You said you are a mom. How many kids do you have?

01:55:01 **A.** Three.

01:55:02 **Q.** Who is the oldest?

01:55:04 **A.** Jacob.

01:55:05 **Q.** When was he born?

01:55:07 **A.** September, 1996.

01:55:09 **Q.** And you also have a daughter Kristin (ph) is it?

01:55:12 **A.** Yep.

01:55:12 **Q.** And how old is she?

01:55:14 **A.** Sixteen.

01:55:15 **Q.** And how old is your other child?

01:55:18 **A.** Bruce is six.

01:55:20 **Q.** And who is the father of Jacob and Kristen?

01:55:31 **A.** Roger Breckenridge.

01:55:36 **Q.** And is Jacob the first child that you ever had?

01:55:39 **A.** Yes.

01:55:41 **Q.** There are no other babies before Jacob?

01:55:44 **A.** No.

01:56:02 MR. OAKES: I have no other questions, Your
01:56:05 Honor.

01:56:05 THE COURT: Redirect?

01:56:07 MS. PEEBLES: We'll take more than an hour,
01:56:09 Judge.

01:56:09 THE COURT: It will take more than an hour?

01:56:11 MS. PEEBLES: No.

01:56:15 THE COURT: You've taken my parking spot twice
01:56:18 today. You dissed me twice on the record.

REDIRECT EXAMINATION

01:56:21 BY MS. PEEBLES:

01:56:21 **Q.** Ms. Wescott, I just want to ask a couple followup
01:56:24 questions. You indicated that your home, your parents'
01:56:26 home, was being renovated at some point, and I couldn't
01:56:31 hear exactly when that was. Could you tell me?

01:56:33 MR. OAKES: Actually, objection, Your Honor.
01:56:36 I don't know if that was her testimony.

01:56:37 THE COURT: She said they lived in the trailer
01:56:39 until the house was finished.

01:56:41 MS. PEEBLES: I see, okay.

01:56:42 **Q.** And what did you mean by that? What time period was

01:56:46 that first of all?
01:56:49 **A.** I would have to say it was the early nineties.
01:57:10 Ninety-one, ninety-two.
01:57:13 **Q.** And was your house being renovated or were they
01:57:18 constructing it?
01:57:18 **A.** Brand new house.
01:57:20 **Q.** And you said that there were eleven people in your
01:57:24 family, eleven family members?
01:57:25 **A.** Children, yes.
01:57:26 **Q.** And you had to go someplace else while the house was
01:57:31 being built?
01:57:32 **A.** No.
01:57:32 **Q.** Did you move from someplace?
01:57:35 **A.** The trailer that was on the property in the front,
01:57:37 we built the house right behind the trailer, we moved from
01:57:40 the trailer into the house.
01:57:41 **Q.** And before you were constructing this particular
01:57:44 house, where were you -- where were you living before that?
01:57:46 **A.** In the trailer on the property on Route 38.
01:57:50 **Q.** So there were eleven of you living in this trailer
01:57:52 while the house was being constructed?
01:57:54 **A.** No. Some of them were forty when we were seven,
01:57:58 eight, some of them lived on their own. In the trailer,
01:58:02 me, my sister Missy, Jessica and my parents.
01:58:06 **Q.** Now, you said that Roger's mother lived on Leavitt

01:58:16 Road?
01:58:16 **A.** Yes.
01:58:17 **Q.** When the house was swarmed?
01:58:19 **A.** No.
01:58:20 **Q.** When did Roger's mother live on Leavitt Road?
01:58:23 **A.** When I was babysitting for Roger and Tracey in 1994.
01:58:27 **Q.** Now Leavitt Road in New Haven, is that what you
01:58:32 said?
01:58:32 **A.** Yes.
01:58:32 **Q.** And how far was that from the D&W?
01:58:36 **A.** A couple minutes probably. I'm not -- I'm not a
01:58:42 Garmin.
01:58:43 **Q.** Was it relatively close?
01:58:44 **A.** Yes.
01:58:45 **Q.** And by the time the investigators swarmed Grandma
01:58:50 Breckenridge's house, Roger's mother had already moved to
01:58:53 Parish?
01:58:54 **A.** Yes.
01:58:54 **Q.** And that was in 1995?
01:58:58 **A.** Yes.
01:58:58 **Q.** And you indicated that you had been drinking the
01:59:11 night that you and Tonya were first talking on the
01:59:14 telephone?
01:59:15 **A.** Yes.
01:59:15 **Q.** And your son you said was at a dance?

01:59:17 **A.** Yes.
01:59:18 **Q.** You had other children at home with you that
01:59:22 evening, correct?
01:59:23 **A.** Yes.
01:59:24 MR. OAKES: Objection.
01:59:26 THE COURT: I don't see it's relevant.
01:59:35 MS. PEEBLES: Okay. No further questions.
01:59:36 Thank you.
01:59:36 THE COURT: Mr. Oakes?
01:59:38 MR. OAKES: Nothing further. Thank you, Your
01:59:40 Honor.
01:59:40 THE COURT: Ms. Wescott, you can step down.
01:59:43 THE WITNESS: Thank you.
01:59:44 THE COURT: Counsel please approach.
(Whereupon, there was an off the record
02:02:22 discussion at the bench).
02:02:22 THE COURT: On the record. We are adjourning
02:02:24 this matter to the twenty-fourth of March, Tuesday,
02:02:27 Wednesday, Thursday, Friday of that week. I have no
02:02:28 time available before that, I'm sorry, so as I get
02:02:31 things into my office through subpoenas and I would
02:02:34 forward them on to the parties quickly, and I'm
02:02:36 assuming they can share or exchange, we don't have to
02:02:39 have any issues, if there are issues I will be
02:02:40 available by phone after court in Lewis County, okay?

02:02:44 Everyone have a safe trip. Mr. Thibodeau, you will be
02:02:48 transported back and forth to Auburn that week as well,
02:02:50 okay? Thank you. Everybody have a safe trip.

(Conclusion of Proceeding).

* * *

C E R T I F I C A T E

I, JENNIFER ADYDAN, an Official Court Reporter in and for the State of New York, Fifth Judicial District, do hereby certify that the foregoing is a true, complete and accurate transcript of my stenographic notes taken in the above-entitled matter and the whole thereof to the best of my ability.

Jennifer Adydan

Jennifer Adydan
Official Court Reporter

DATED: February 24, 2015

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF OSWEGO: CRIMINAL TERM:

--x

THE PEOPLE OF THE STATE OF NEW YORK

Indict. No.
94C-0161

HEARING
VOLUME 7

- against-

GARY THIBODEAU,

Defendant.

--x

Oswego County Courthouse
25 E. Oneida Street
Oswego, NY 13126

DATE: February 5, 2015

Before:

HONORABLE DANIEL R. KING
Acting County Court Judge

Appearances:

GREGORY S. OAKES, ESQ.
District Attorney, Oswego County
MARK M. MOODY, ESQ.
Chief Assistant District Attorney

OFFICE OF THE FEDERAL PUBLIC DEFENDER
BY: LISA PEEBLES, ESQ., Public Defender
RANDI JUDA BIANCO, ESQ., Assistant Public Defender

Defendant is present

08:41:40

08:41:40

INDEX TO WITNESSES

	Direct	Cross	Redirect	Recross
FOR THE PEOPLE:				
None				
FOR THE DEFENDANT:				
Christopher Combes	1128	1133	1138	--
Jessica Howard	1141	1159	1174	--
Jonathan Barkley	1178	1184	1190	--
Deborah Vecchio	1192	1209	1235	--
Jessica Howard	1242	1245 (voir dire)		--
Carmen Rojek	1258	--	--	--

INDEX TO EXHIBITS

	Identification	Evidence
FOR THE PEOPLE:		
FFF. Photo	1230	1232
GGG. Photo	1230	1232
HHH. Photo	1230	1232
FOR THE DEFENDANT:		
84. Darcy Russell lease	--	1195
86. Photo Jennifer Wescott	--	1201
87. Photo Roger Breckenridge	--	1209
145. Photo (group)	1242	--

09:03:57 THE COURT: Next witness, Ms. Peebles.

09:03:58 MS. PEEBLES: Chris Combes.

09:04:00 THE CLERK: Raise your right hand.

CHRISTOPHER COMBES, Called as a witness, having been duly sworn, was examined and testified as 09:04:05 follows:

09:04:05 THE CLERK: Please state your name for the 09:04:07 record.

09:04:07 THE WITNESS: Christopher L. Combes.

09:04:09 THE CLERK: Spell your last name.

09:04:09 THE WITNESS: C-O-M-B-E-S.

09:04:15 THE COURT: Mr. Combes, before we start, do 09:04:17 you consent to have your testimony video and audio 09:04:19 taped?

09:04:20 THE WITNESS: I'd rather not.

09:04:21 THE COURT: Make sure everybody understands 09:04:22 this because there is a concern. If the witness does 09:04:25 not wish to be videoed or audioed, there is no still 09:04:29 pictures by the media. Let me make it clear. No still 09:04:32 pictures by anybody in the audience. Everybody 09:04:35 understand that? Okay, thank you.

DIRECT EXAMINATION

09:04:38 BY MS. PEEBLES:

09:04:39 **Q.** Good morning, Mr. Combes.

09:04:41 **A.** Good morning.

09:04:41 **Q.** How old are you?

09:04:43 **A.** Thirty-four.

09:04:43 **Q.** Do you reside in Oswego County?

09:04:45 **A.** Yes.

09:04:45 **Q.** How long have you lived in Oswego County?

09:04:47 **A.** Thirty-four years.

09:04:48 **Q.** What do you do for a living?

09:04:49 **A.** Paving contractor.

09:04:52 **Q.** How long have you been working as a paving
09:04:54 contractor.

09:04:56 **A.** Since I was eighteen.

09:04:57 **Q.** Who owns the company?

09:04:59 **A.** My brother Heath.

09:05:00 **Q.** I want to ask you some questions about an individual
09:05:04 named Roger Breckenridge. Do you know Roger Breckenridge?

09:05:08 **A.** Yes.

09:05:09 **Q.** When did you first meet Roger Breckenridge to the
09:05:12 best of your recollection?

09:05:13 **A.** Early two-thousands.

09:05:16 **Q.** And how did you meet him? What were the
09:05:19 circumstances under which you met Roger Breckenridge?

09:05:21 **A.** I was working paving a parking lot for Dunkin Donuts
09:05:25 on the east side here in Oswego, and Roger comes strolling
09:05:31 up looking for a job, and we needed the help so we ended up
09:05:36 hiring him on.

09:05:38 **Q.** And was he working full time or part time or was it
09:05:43 sporadic?
09:05:44 **A.** Very sporadic.
09:05:46 **Q.** When Roger Breckenridge was working with you at
09:05:50 Heath Paving, did he ever mention Heidi Allen?
09:05:53 **A.** While we were working, no. We did have a -- I don't
09:05:59 know, I shouldn't say conversation, but he did bring her
09:06:02 name up.
09:06:03 **Q.** When was that?
09:06:05 **A.** We were at our shop, Heath Paving shop, and I think
09:06:10 we were changing some tires or something and he had
09:06:14 mentioned her name.
09:06:15 **Q.** Was anyone else present other than you?
09:06:18 **A.** Not that I can recall.
09:06:19 **Q.** What did Roger Breckenridge say about Heidi Allen?
09:06:24 THE COURT: Before you answer that question,
09:06:26 same standing objection?
09:06:28 MR. OAKES: Yes, Your Honor.
09:06:28 THE COURT: That we talked about throughout
09:06:29 this whole proceeding, hearsay, as to whether or not it
09:06:33 falls under the exception, correct?
09:06:34 MS. PEEBLES: Yes, Judge.
09:06:35 THE COURT: I want to make sure we understand
09:06:37 that. You can answer the question now.
09:06:39 **A.** I don't know how it came about. My relationship

09:06:43 with Roger wasn't a friendship, it was more of a business-related thing, and you try and keep the two separate, and for some reason, and I don't know if he was trying to get off his chest or --

09:06:59 MR. OAKES: Objection, Your Honor.

09:07:00 THE COURT: Sustained.

09:07:05 **A.** I don't think he was admitting to it, but he definitely said the name Heidi Allen.

09:07:10 **Q.** What did he say?

09:07:11 **A.** In the words of saying, "We chopped her up, we put her in a wood stove and put her in a vehicle and sent her to Canada."

09:07:20 **Q.** Did you ever report this to law enforcement?

09:07:24 **A.** At the time, no.

09:07:25 **Q.** Did you eventually report it to law enforcement?

09:07:29 **A.** Yes.

09:07:29 **Q.** When was that?

09:07:30 **A.** This summer.

09:07:33 **Q.** And why did you?

09:07:35 **A.** Because I had a friend of mine that's in the Sheriff's Department, and at the time they were up in Parish or wherever it was that they were doing an investigation with the cabins, and he was one of the officers that had to set out in the woods at two o'clock in the morning by himself, so I mentioned to him that I really

09:07:57 didn't want to be involved into it, and I didn't take
09:08:00 Roger's words, I didn't take it credibly, and I -- I told
09:08:08 him what Roger had said. Well, the officer went back and
09:08:13 told one of the investigators and the investigator called
09:08:16 me and that's when I told him.

09:08:17 **Q.** Do you remember when that was?

09:08:21 **A.** Could have been in July. I'm assuming it was July.

09:08:24 **Q.** July of 2014?

09:08:26 **A.** Yes.

09:08:26 **Q.** Now, in addition, did you recall hearing Roger
09:08:36 Breckenridge mention the name Murtaugh?

09:08:40 **A.** Yes.

09:08:41 **Q.** And do you remember in what context you heard him
09:08:43 mention it?

09:08:44 **A.** I do not.

09:08:45 **Q.** And did you -- did -- strike that. Did Roger
09:08:49 Breckenridge mention the name Thibodeau during the
09:08:52 conversation?

09:08:52 **A.** Yes.

09:08:52 **Q.** And do you remember in what context?

09:08:54 **A.** No.

09:08:58 MS. PEEBLES: Nothing further, thank you.

09:09:03 THE COURT: Mr. Moody or Mr. Oakes?

09:09:10 MR. OAKES: Your Honor, can I have the
09:09:14 microphone please?

09:09:17 (Whereupon, there was a pause in the
proceeding.)

CROSS-EXAMINATION

09:10:06 BY MR. OAKES:

09:10:06 **Q.** Good morning, Mr. Combes.

09:10:09 **A.** Good morning.

09:10:10 **Q.** Roger Breckenridge started working for you in the
09:10:17 early two-thousands?

09:10:18 **A.** No. He started working for my brother, Heath, I'm
09:10:20 sorry.

09:10:20 **Q.** And you worked for your brother Heath or with your
09:10:23 brother Heath as part of Combes Paving?

09:10:26 **A.** Yes.

09:10:27 **Q.** And you described your relationship with Roger
09:10:30 Breckenridge as one being basically a business
09:10:33 relationship?

09:10:33 **A.** Yes.

09:10:34 **Q.** Did you ever go out drinking with him?

09:10:38 **A.** Yes, I did, because we worked out of town, not as a
09:10:45 friendship going out drinking with Roger, no, but we did do
09:10:49 out of town work, and Roger was out to dinner with us, and
09:10:52 we did go to facilities like that, yes.

09:10:56 **Q.** Outside of let's call those work trips where you are
09:11:01 overnight, out of town, did you ever go to birthday parties
09:11:04 for him or he'd come to your birthday party?

09:11:07 **A.** No.

09:11:07 **Q.** Did you guys ever hang out at each other's house? Did he ever come by your place?

09:11:14 **A.** If he came by my place, it was to sell me something.

09:11:18 **Q.** Okay, so again, you didn't have the type of relationship where he would confide close personal secrets to you?

09:11:26 **A.** Absolutely not.

09:11:28 **Q.** And the day that you said he mentioned Heidi Allen, and this is sometime in the two-thousands, do you have a sense as to what year it would have been, Mr. Combes?

09:11:37 **A.** I don't. I really don't. I didn't, you know, I took it with a grain of salt because it was Roger. Knowing Roger, I didn't take -- I didn't -- I didn't take it to heart because I didn't -- I didn't think he'd ever be capable of doing something like that.

09:11:54 **Q.** Why not?

09:11:55 **A.** Just because Roger was Roger. If you knew him you'd -- he was a drug addict and, you know, if it was raining, if he told you it was raining outside, you'd have to look out the window and see for yourself. That's just the way he was.

09:12:09 **Q.** Well, again, you told Ms. Peebles that you didn't think it was credible when he told you that.

09:12:14 **A.** No.

09:12:14 **Q.** And I guess I'm trying to get to the why didn't you
09:12:18 think it was credible?

09:12:19 **A.** Because of the way Roger is.

09:12:21 **Q.** Was it your sense when he was telling you this that
09:12:25 he was telling you something he had really done or maybe he
09:12:29 was just telling you something to try to get your attention
09:12:31 or make himself seem more important?

09:12:33 MS. PEEBLES: Objection.

09:12:34 THE COURT: I'm going to allow it.

09:12:37 **A.** I'm sorry, repeat the question.

09:12:37 **Q.** In listening to him, did he sound serious like this
09:12:41 is something he had actually done or did it sound like
09:12:44 something he was talking about to either kind of get your
09:12:46 attention or to make himself seem more important like the
09:12:49 big man?

09:12:50 **A.** I'm going to be honest with you, I didn't pay much
09:12:52 attention to him. I just remember the words that he said.
09:12:54 I didn't think much on it.

09:12:57 **Q.** Okay, his words were that again, did he say I, we,
09:13:06 they, what were the -- did he use a pronoun, did he use a
09:13:10 name?

09:13:10 **A.** It was "we."

09:13:11 **Q.** "We?" Okay. And it was the "we" chopped her up,
09:13:16 put her in a vehicle and sent her to Canada?

09:13:19 **A.** I can't put it in context for you. I do know that

09:13:24 those were the words that were said, but whether they were
09:13:28 mixed a different way, but yes, that's the basic in a
09:13:33 nutshell, that's what was said, yes.

09:13:35 **Q.** But you don't, and again, it's some time, you don't
09:13:40 remember the exact words or how he was saying it?

09:13:42 **A.** No. It could have been, "We put her in a wood stove
09:13:47 but we chopped her up and sent her to Canada." It could
09:13:52 have been put four different ways. I'm not exactly sure
09:13:55 how he put it but --

09:13:56 **Q.** So your testimony, it's -- you're not telling this
09:13:59 court that these are the exact words that Roger said, this
09:14:03 was kind of more of your impression, kind of your summary
09:14:05 of what he said?

09:14:06 **A.** No, they were the exact words, but I'm not saying
09:14:10 that's how they were put in a sentence or the context of
09:14:12 how he said it, but yes, that is what he said, but
09:14:16 that's -- may not be the way he said it to me.

09:14:19 **Q.** Did he -- did he say the word "chopped" or did you
09:14:23 assume that he chopped her because he talked about a wood
09:14:26 stove?

09:14:26 **A.** No, he said, "chopped her up."

09:14:29 **Q.** Okay, did he -- did he say the name Michael Bohrer
09:14:34 at any point?

09:14:34 **A.** No.

09:14:35 **Q.** Did he say the name James Steen at any point?

09:14:38 **A.** No.

09:14:39 **Q.** But during that same conversation he did say the name Thibodeau?

09:14:43 **A.** Yes.

09:14:45 **Q.** Did he specify Gary or Richard Thibodeau?

09:14:48 **A.** No.

09:14:48 **Q.** And was it Thibodeau singular or Thibodeau plural, Thibodeaus?

09:14:55 **A.** Thibodeau.

09:14:56 **Q.** Singular?

09:14:57 **A.** Yes.

09:14:58 **Q.** During that same conversation when he mentioned Thibodeau, did he mention anything about drugs or cocaine?

09:15:04 **A.** No. I made the assumption that that's what it was about, was the drugs.

09:15:08 **Q.** How -- how did you reach that conclusion?

09:15:11 **A.** Just because of the court case years ago, I mean I don't really know much about it, but I do know that it was -- it was over drugs, so I just assumed that it was over drugs.

09:15:20 **Q.** But Mr. Breckenridge didn't tell you it was over drugs.

09:15:23 **A.** No.

09:15:24 **Q.** And Mr. Breckenridge, he didn't admit to kidnapping Heidi or taking her from the store, he didn't tell you he

09:15:34 did that did he?

09:15:35 **A.** No.

09:15:36 **Q.** So really the description he gave to you was --
09:15:40 well, did he say whether she was alive when he saw her or
09:15:45 dead when he saw her, first saw her?

09:15:48 **A.** No. Pretty cut and dry as to what he said to me,
09:15:49 and like I said, I didn't take much from him, and I didn't
09:15:53 really go into detail with him so --

09:15:57 **Q.** And as Ms. Peebles asked you, and you never reported
09:16:01 it to law enforcement at that point?

09:16:03 **A.** No.

09:16:04 **Q.** Because you didn't think it was serious and you
09:16:06 didn't really think it was real?

09:16:08 **A.** Right.

09:16:09 **Q.** Okay.

09:16:14 MR. OAKES: No further questions, Your Honor.

09:16:17 THE COURT: Ms. Peebles?

09:16:18 MS. PEEBLES: A brief followup question.

REDIRECT EXAMINATION

09:16:23 BY MS. PEEBLES:

09:16:23 **Q.** Mr. Combes, you mentioned that Roger Breckenridge
09:16:26 was a drug addict.

09:16:27 **A.** Yes.

09:16:28 **Q.** How did you know that?

09:16:29 **A.** It was pretty -- it was pretty noticeable, very

09:16:34 noticeable, and just -- he just was.

09:16:38 **Q.** Did you ever see him use any type of
09:16:40 narcotic?

09:16:42 **A.** Not that I can recall, no.

09:16:45 **Q.** Do you know what type of drugs he was using?

09:16:48 **A.** I don't.

09:16:52 **Q.** Did he ever ask you for money?

09:16:55 **A.** Yes.

09:16:55 **Q.** How often did he ask you for money?

09:16:57 **A.** Quite often.

09:16:59 MR. OAKES: Objection, Your Honor, relevance
09:17:00 and beyond the scope.

09:17:02 THE COURT: It is beyond the scope. I'm going
09:17:04 to sustain the objection.

09:17:05 **Q.** Now, when you heard the word "Thibodeau," you don't
09:17:09 know whether he mentioned Thibodeau as being innocent
09:17:13 during the course of that conversation he talked about with
09:17:15 Heidi Allen.

09:17:16 **A.** He very well could have. I don't remember, and I'm
09:17:19 not going to sit here and make a story up to defend
09:17:22 anybody, so yeah, he -- I don't recall him saying anything
09:17:25 other than the name Thibodeau.

09:17:27 **Q.** Thank you, Mr. Combes.

09:17:29 MS. PEEBLES: Nothing further.

09:17:30 THE COURT: Thank you. Mr. Oakes?

09:17:31 MR. OAKES: No recross, Your Honor.
09:17:33 THE COURT: Mr. Combes, thank you very much,
09:17:35 sir. Have a good day. You can step down. Next
09:17:37 witness?
09:17:44 MS. PEEBLES: Jessica Howard.
09:17:53 THE COURT: You obtained a statement by Ms.
09:17:55 Howard yesterday or --
09:17:57 MS. PEEBLES: We just did it yesterday.
09:17:59 THE COURT: You got it yesterday or this
09:18:01 morning?
09:18:01 MS. PEEBLES: This morning.
09:18:02 MR. OAKES: They -- the investigators
09:18:04 interviewed her last night, Your Honor.
09:18:06 THE COURT: Okay, I just want to make sure.
09:18:08 MS. PEEBLES: We did get --
09:18:09 THE COURT: Okay.
09:18:30 THE CLERK: Raise your right hand, put your
09:18:37 left on the Bible.
JESSICA HOWARD, Called as a witness, having
09:18:40 been duly sworn, was examined and testified as follows:
09:18:40 THE CLERK: Please state your name for the
09:18:48 record.
09:18:48 THE WITNESS: Jessica Howard.
09:18:49 THE CLERK: Spell your last name.
09:18:50 THE WITNESS: H-O-W-A-R-D.

09:18:53 THE CLERK: Have a seat please.

09:18:54 THE COURT: Ready?

09:18:56 MS. BIANCO: Do you have to ask her about the
09:18:58 video?

09:18:58 THE COURT: I'm going to. I didn't see Ms.
09:19:01 Peebles here a second ago. I wanted to check with her.
09:19:04 Ms. Howard, do you consent to have your testimony
09:19:06 videotaped and audio taped?

09:19:08 THE WITNESS: Yes.

09:19:08 THE COURT: You do, okay.

DIRECT EXAMINATION

09:19:12 BY MS. BIANCO:

09:19:12 **Q.** Good morning, Ms. Howard.

09:19:14 **A.** Hi.

09:19:14 **Q.** How old are you?

09:19:14 **A.** Twenty-nine.

09:19:15 **Q.** And what county do you live in?

09:19:16 **A.** Oswego.

09:19:19 **Q.** Who do you live with?

09:19:20 **A.** My husband and six kids.

09:19:22 **Q.** And who is your husband?

09:19:23 **A.** Andrew Howard.

09:19:24 **Q.** How long have you been married?

09:19:26 **A.** Twelve years.

09:19:27 **Q.** Is your husband Andrew related to Roger

09:19:30 Breckenridge?

09:19:31 **A.** Yes.

09:19:31 **Q.** How is he related?

09:19:32 **A.** That's his uncle.

09:19:33 **Q.** Do you currently reside near any of the other
09:19:36 Breckenridges?

09:19:37 **A.** Yes.

09:19:38 **Q.** And who would that be?

09:19:39 **A.** Allen Howard and the Wests are related to the
09:19:47 Howards and Breckenridges.

09:19:48 **Q.** So which West would live close to you?

09:19:50 **A.** Mike.

09:19:51 **Q.** Okay, how about Dan?

09:19:53 **A.** And Danny.

09:19:54 **Q.** And how close do these Breckenridges live to you?

09:19:57 **A.** Danny lives next door, Mike lives not even a mile
09:20:01 and Allen lives in Lot 2.

09:20:03 **Q.** And how long have you known the Breckenridge family?

09:20:07 **A.** As long as I have been married.

09:20:08 **Q.** So that would be approximately how many years?

09:20:10 **A.** Twelve years.

09:20:11 **Q.** Okay, do you know a person named Candy Shortsleeve?

09:20:15 **A.** Yes.

09:20:15 **Q.** And how do you know her?

09:20:16 **A.** That's my mother-in-law.

09:20:18 **Q.** And is she related to Roger Breckenridge?

09:20:21 **A.** Yes.

09:20:22 **Q.** How?

09:20:22 **A.** Sister.

09:20:23 **Q.** Now did you know Heidi Allen?

09:20:27 **A.** Yes.

09:20:27 **Q.** How long had you known her before her disappearance?

09:20:31 **A.** Practically two years.

09:20:34 **Q.** And who introduced you to Heidi Allen?

09:20:36 **A.** Her mother.

09:20:37 **Q.** How did you meet her? What were the circumstances?

09:20:40 **A.** Oh, I was in foster care.

09:20:45 **Q.** And how did you know Heidi's mother?

09:20:47 **A.** Teacher.

09:20:48 **Q.** Your teacher?

09:20:50 **A.** Um hum.

09:20:51 **Q.** Okay, and she introduced you to Heidi?

09:20:54 **A.** Yes.

09:20:54 **Q.** And did you develop a friendship with her?

09:20:57 **A.** Yes, I did.

09:20:58 THE COURT: With who, Heidi or Heidi's mother?

09:21:01 **Q.** Heidi Allen.

09:21:03 **A.** Heidi.

09:21:03 **Q.** And how would you describe your relationship with
09:21:06 Heidi Allen?

09:21:07 **A.** Like a sister.

09:21:08 **Q.** Would you talk about personal things to Heidi?

09:21:10 **A.** Yes.

09:21:11 **Q.** Okay, like what?

09:21:12 **A.** About --

09:21:14 MR. OAKES: Objection, Your Honor.

09:21:16 MS. BIANCO: Well, Judge, this becomes
09:21:17 relevant if you give me a couple questions.

09:21:20 THE COURT: She was nine years old, right, at
09:21:22 the time?

09:21:22 MS. BIANCO: It's what the information she
09:21:23 gave to Heidi, where that information went.

09:21:26 **Q.** Why were you talking to Heidi?

09:21:28 **A.** About my being in foster care.

09:21:31 **Q.** And why was that?

09:21:32 **A.** Being raped.

09:21:33 **Q.** And what was your understanding about the
09:21:36 information you were giving to Heidi? Where was that
09:21:38 going?

09:21:38 **A.** To the cops.

09:21:40 MR. OAKES: Objection, Your Honor, speculation
09:21:42 and relevance.

09:21:43 MS. BIANCO: I'll ask her how she knows.

09:21:44 THE COURT: What's the relevance?

09:21:46 MS. BIANCO: Heidi Allen was acting as an

09:21:49 informant and still passing on information from Ms.
09:21:51 Howard to the police. This is in 1994, Judge, and
09:21:54 that's what I want to get at.

09:21:56 THE COURT: There is no proof at this point
09:21:57 that Heidi Allen was an informant. Every argument so
09:21:59 far Heidi Allen was an informant for drug issues, not
09:22:03 foster care rape issues.

09:22:05 MS. BIANCO: She's still talking to the police
09:22:06 at this time.

09:22:06 THE COURT: That's your belief.

09:22:07 MS. BIANCO: That's what I want to ask her if
09:22:09 I could.

09:22:09 THE COURT: You better ask foundation for
09:22:12 this, at nine years old, how she thought it was related
09:22:16 to the police.

09:22:16 **Q.** What made you believe that Heidi was relaying your
09:22:20 information to the police?

09:22:21 **A.** Because she told me.

09:22:22 MR. OAKES: Objection, hearsay.

09:22:24 THE COURT: Sustained, it's hearsay.

09:22:25 **Q.** Did you talk to the police about your abuse?

09:22:28 **A.** Yes.

09:22:28 **Q.** Okay, were you comfortable doing that?

09:22:31 **A.** Yes.

09:22:32 **Q.** Why were you giving information to Heidi?

09:22:34 **A.** Because the police --

09:22:36 MR. OAKES: Objection, Your Honor, relevance.

09:22:38 THE COURT: You got to explain to me the
09:22:40 relevance. She just said she talked to the police
09:22:42 about her abuse which no child should go through.

09:22:45 MS. BIANCO: Exactly.

09:22:46 THE COURT: And how do you tie Heidi Allen
09:22:49 into this?

09:22:49 MS. BIANCO: Heidi Allen was speaking to the
09:22:52 police about some of the abuse she suffered.

09:22:54 THE COURT: Based on this young lady at nine
09:22:56 years old saying Heidi Allen told me she talked to the
09:22:59 police? That's hearsay.

09:23:00 MS. BIANCO: Judge, she has an independent
09:23:04 understanding of Heidi talking to the police. I can
09:23:06 ask the question.

09:23:06 THE COURT: Go ahead.

09:23:07 **Q.** How do you know Heidi was talking to the police in
09:23:09 1994 about what you were saying?

09:23:10 **A.** Because the cops knew all the information.

09:23:12 **Q.** And did you tell the cops the information?

09:23:15 **A.** Not all of it.

09:23:15 MR. OAKES: Objection, Your Honor.

09:23:16 THE COURT: It's based on hearsay. I'm going
09:23:18 to strike it.

09:23:19 MS. BIANCO: She just said "not all of it," Judge.

09:23:21 THE COURT: It's based on hearsay.

09:23:23 **Q.** On August eight, 2011 did you call the police?

09:23:27 **A.** Yes.

09:23:27 **Q.** Why?

09:23:28 **A.** 'Cause it had been a fight me and my husband had.

09:23:34 **Q.** And do you remember on August eighth, 2011 giving the police information about Heidi Allen?

09:23:41 **A.** Yes.

09:23:41 **Q.** What did you tell them?

09:23:43 **A.** That she was --

09:23:45 MR. OAKES: Objection, Your Honor.

09:23:46 THE COURT: No, I'll allow it.

09:23:47 **A.** She was in a field behind a shed.

09:23:50 MR. OAKES: Objection, Your Honor, as to the witness's foundation, basis of knowledge.

09:23:55 THE COURT: I'm not going to give it any credibility at this point unless I have some foundation, but she can answer the question.

09:24:01 MR. OAKES: Okay.

09:24:02 **Q.** Well, where did you speak to the police on August eight, 2011?

09:24:07 **A.** Outside of my home.

09:24:09 **Q.** And where was your home?

09:24:10 **A.** On County Route 48.

09:24:12 **Q.** Okay, and where did you tell them you got information concerning Heidi Allen's -- did you tell them information about Heidi Allen's death and disappearance?

09:24:23 **A.** Just behind the field and the shed.

09:24:28 MR. OAKES: Objection, Your Honor. Again, it's the witness's basis of knowledge.

09:24:31 THE COURT: It's a credibility issue. She can answer it.

09:24:33 **Q.** And how long did you reside at that particular residence?

09:24:39 **A.** Probably three, four years.

09:24:41 **Q.** Did any police come to talk to you about the information you had about Heidi Allen in 2011?

09:24:47 **A.** No.

09:24:47 **Q.** Were you -- did you have a home telephone number?

09:24:50 **A.** Yes.

09:24:51 **Q.** Were you listed?

09:24:52 **A.** Yes.

09:24:53 **Q.** No one called you in 2012?

09:24:55 **A.** No.

09:24:55 **Q.** 2013?

09:24:56 **A.** No.

09:24:57 MR. OAKES: Objection, relevance, Your Honor.

09:24:58 THE COURT: Sustained.

09:25:01 MS. BIANCO: Well, this, Your Honor, this goes
09:25:05 directly to what the police knew about Roger
09:25:07 Breckenridge, and I'm going to get into this.

09:25:09 THE COURT: No, it doesn't, it does not. I
09:25:11 disagree with you. I'm not trying to be difficult, Ms.
09:25:13 Bianco. You have not laid any foundation for
09:25:16 credibility of the statement. This is a young lady who
09:25:18 is making or saying something to the cops.

09:25:21 **Q.** I'd like to talk to you about Roger Breckenridge.
09:25:25 You know Roger Breckenridge?

09:25:27 **A.** Yes.

09:25:27 **Q.** Were you ever in his presence when he was discussing
09:25:30 Heidi Allen?

09:25:32 **A.** Yes.

09:25:33 **Q.** Do you remember one particular time when you were at
09:25:36 McDonald's?

09:25:37 **A.** Yes.

09:25:37 **Q.** Could you tell us when that was?

09:25:41 **A.** Not really.

09:25:42 **Q.** Was it the last ten years?

09:25:44 **A.** Yes.

09:25:44 **Q.** Who was present?

09:25:46 **A.** Me and my husband.

09:25:47 **Q.** And who else?

09:25:48 **A.** My kids.

09:25:49 **Q.** Okay, and what did Roger say to you?

09:25:54 **A.** That "the bitch ain't going to be found."

09:25:57 **Q.** I'm sorry, can you repeat that?

09:25:59 **A.** "The bitch is not going to be found."

09:26:01 **Q.** Did he also mention her -- anything about her being
09:26:04 an informant?

09:26:05 **A.** A rat.

09:26:06 **Q.** A what?

09:26:06 **A.** "She's a rat."

09:26:08 **Q.** He said that to you?

09:26:09 **A.** Yes.

09:26:09 **Q.** And did he state where her body was?

09:26:13 **A.** No.

09:26:14 **Q.** What did he say about the evidence if anything about
09:26:19 her body?

09:26:20 **A.** "She ain't going to be found."

09:26:22 **Q.** Did he say anything about it being a waste of time
09:26:27 looking for her?

09:26:27 **A.** Yes.

09:26:28 MR. OAKES: Objection, leading, Your Honor.

09:26:30 THE COURT: I'll allow it. You can answer the
09:26:32 question. Ask the question again.

09:26:34 **Q.** Did he say anything about it being a waste of time
09:26:36 looking for Heidi Allen?

09:26:39 **A.** Yes.

09:26:39 **Q.** What did he say?

09:26:41 **A.** "It's a waste of government's time to be finding her."

09:26:44 **Q.** And what did you say in response to Roger when he was saying this?

09:26:48 **A.** It's my friend, that she should be found.

09:26:52 **Q.** Was this the only time that you ever heard Roger Breckenridge talk about the disappearance or death of Heidi Allen?

09:27:00 **A.** No.

09:27:00 **Q.** How many other times did you hear him talk?

09:27:04 **A.** Probably like once or twice.

09:27:06 **Q.** Okay, and over the course of how many years?

09:27:08 **A.** Twelve.

09:27:11 **Q.** Where would these conversations occur?

09:27:13 **A.** Parties mostly.

09:27:15 **Q.** Did he ever say why Heidi Allen was -- was abducted?

09:27:22 **A.** Being a rat.

09:27:24 **Q.** Did he specify what about being a rat, what was she a rat on?

09:27:30 **A.** Drugs.

09:27:31 **Q.** Did you have an occasion to meet with the prosecutors and the investigators in this case on January eight, 2015?

09:27:41 **A.** Yes.

09:27:41 Q. And where did you meet them?

09:27:43 A. County jail, Oswego County jail.

09:27:46 Q. Were you in the jail?

09:27:48 A. No.

09:27:48 Q. In the investigator's office?

09:27:50 A. Yes.

09:27:51 Q. Were you trying to be cooperative?

09:27:52 A. Yes.

09:27:53 Q. And what did you tell them as to why Heidi Allen was
09:27:56 killed?

09:27:56 A. Drugs and -- mostly that's it.

09:28:04 THE COURT: And what?

09:28:04 THE WITNESS: That's it.

09:28:05 THE COURT: That's it.

09:28:06 THE WITNESS: Um hum.

09:28:07 Q. Did you mention anything about Heidi going to call
09:28:10 the cops on Roger?

09:28:12 A. Yes.

09:28:13 Q. What did you say?

09:28:14 MR. OAKES: Objection, Your Honor.

09:28:16 THE COURT: She's not testified to anything
09:28:18 that Roger said that the cops wouldn't be called on her
09:28:23 at this point. What's the basis?

09:28:24 Q. What did you say that Roger said to you about the
09:28:29 cops?

09:28:30 **A.** That it's a waste of time.

09:28:32 **Q.** Okay, how about did Roger ever say that he killed
09:28:36 Heidi because she was going to call the cops on him and
09:28:39 tell them about selling drugs? Did he say that?

09:28:42 MR. OAKES: Objection, leading, Judge.

09:28:43 THE COURT: Yes, that's sustained. That's
09:28:45 over the board on the leading. Sustained. Don't
09:28:47 answer the question.

09:28:48 **Q.** What did Roger say to you about calling the cops,
09:28:51 about Heidi calling the cops, what did he say?

09:28:53 MR. OAKES: Objection as to when, Your Honor.

09:28:56 THE COURT: I'd like to hear when if possible
09:29:00 approximately.

09:29:01 THE WITNESS: When?

09:29:01 THE COURT: Approximately.

09:29:02 THE WITNESS: When he said that? I don't
09:29:09 know. It was in the springtime.

09:29:11 **Q.** Springtime of the last how many years?

09:29:14 **A.** I would say two.

09:29:15 **Q.** Last two years?

09:29:16 **A.** Yes.

09:29:18 **Q.** You have to speak up just because she's taking
09:29:21 everything down.

09:29:22 **A.** Okay, I'll move closer.

09:29:25 **Q.** Okay, and what did he say to you about Heidi being

09:29:29 killed and why?

09:29:31 **A.** Just being a rat on drugs, she was going to break 09:29:35 him on selling drugs.

09:29:37 **Q.** Break who?

09:29:39 **A.** Tell the cops I mean, bust her.

09:29:44 **Q.** And did Roger say that he killed Heidi?

09:29:47 **A.** No.

09:29:47 **Q.** Did Roger tell you that he knew where her body was 09:29:53 buried?

09:29:54 **A.** No.

09:29:54 **Q.** What else did Roger say about Heidi Allen?

09:30:02 **A.** Just she's not going to be found, and she's a rat, 09:30:06 and it's a waste of government's time.

09:30:09 **Q.** Did you offer -- when you met with the prosecutors 09:30:15 and the investigators on January eight, 2015, did you offer 09:30:20 to help them get more information?

09:30:22 **A.** Yes.

09:30:24 **Q.** Were you ever expressing any kind of concern about 09:30:27 your safety?

09:30:27 **A.** No.

09:30:28 **Q.** Did you ever talk about your fear of being dead?

09:30:34 **A.** No.

09:30:36 **Q.** Have you been given a hard time by any of your 09:30:40 family members about what you have been talking about about 09:30:42 Heidi Allen in there?

09:30:43 **A.** No.

09:30:44 **Q.** None at all?

09:30:44 **A.** No.

09:30:45 **Q.** When you were meeting with the investigators on
09:30:51 January eighth, 2015, did there come a point in time when
09:30:57 you were in the interview room and you were left alone with
09:31:01 their investigator, Kathleen MacPherson?

09:31:03 **A.** Yes.

09:31:05 **Q.** Okay, did she make suggestions to you about what to
09:31:10 say to your family about why you were in the police
09:31:12 department?

09:31:12 **A.** Yes.

09:31:13 MR. OAKES: Objection, Your Honor, relevance.

09:31:16 THE COURT: It's hearsay.

09:31:19 MS. BIANCO: It's not offered for the truth.

09:31:21 THE COURT: Okay, so she's not going to tell
09:31:23 me now what the suggestions were?

09:31:25 **Q.** I'm going to follow up with did you get a phone call
09:31:29 when you were in the interview room?

09:31:31 **A.** Yes.

09:31:31 **Q.** Did you follow up by telling the person on the
09:31:35 phone -- was that a family member?

09:31:38 **A.** Yes.

09:31:38 **Q.** And did you follow the suggestion of Ms. MacPherson
09:31:41 as to what to say as to why you were there?

09:31:42 **A.** Yes.

09:31:43 **Q.** And what did you say?

09:31:44 **A.** That I was here for the fight that we had in 2004.

09:31:50 **Q.** And why didn't you want to talk about Heidi Allen on
09:31:53 the phone with your family member?

09:31:54 **A.** Because I didn't want --

09:31:56 MR. OAKES: Objection, Your Honor, on
09:31:57 relevance.

09:31:58 MS. BIANCO: She lives surrounded by the
09:32:00 Breckenridge, Judge.

09:32:02 THE COURT: Well, she just said she's not been
09:32:03 harassed at all by the family.

09:32:04 MS. BIANCO: Well, she just now, she just
09:32:06 said, "I didn't want them to know."

09:32:08 MR. OAKES: Your Honor, she's already
09:32:09 testified she has no concerns over her safety. She
09:32:13 hasn't been harassed.

09:32:14 THE COURT: She said that, the first line of
09:32:15 questions, you said do you have any fear about talking
09:32:18 about it from family members. No. Ever had any
09:32:20 problems with family members. No.

09:32:22 **Q.** Did you have any problems with family members when
09:32:24 the first newspaper article came out?

09:32:27 **A.** Just a little bit, but not a lot.

09:32:30 **Q.** Okay, and why are you coming forward now?

09:32:34 **A.** I wanted to come forward a long time ago.

09:32:38 **Q.** When is the first time you came forward about Heidi Allen?

09:32:40 **A.** 2004.

09:32:42 **Q.** Okay, and who did you call?

09:32:44 **A.** I called the cops.

09:32:45 **Q.** Which cops? Oswego County Sheriff's?

09:32:49 **A.** It would probably be Mexico area.

09:32:53 **Q.** Okay, and what did you say then in 2004?

09:32:56 **A.** That I knew --

09:32:57 MR. OAKES: Objection, Your Honor. Relevance and bolstering.

09:33:01 THE COURT: Well --

09:33:02 MS. BIANCO: Well, Your Honor, if the police had been receiving information or tried -- she's trying to give information from 2004 and no one has ever followed up, I think that's certainly relevant to this investigation. It's also relevant to the Brady issues about disclosures, non-disclosures.

09:33:16 THE COURT: It's absolutely not related to the Brady issue. I'll allow it, but to be honest with you, Ms. Bianco, what you're getting into is if an investigator talked to her and the investigator finds her not credible.

09:33:34 MS. BIANCO: Well, no one ever talked to her.

09:33:35 That's the problem, Judge.

09:33:36 THE COURT: Let's see what she says.

09:33:38 **Q.** In 2004 did you try and give information about Heidi
09:33:42 Allen?

09:33:42 **A.** Yes.

09:33:42 **Q.** Did anyone ever come to speak with you?

09:33:45 **A.** No.

09:33:45 **Q.** And in 2011 you tried to give information about
09:33:48 Heidi Allen?

09:33:49 **A.** Yes.

09:33:50 MR. OAKES: Objection, Your Honor.

09:33:51 **Q.** Anybody come to speak to you?

09:33:52 **A.** No.

09:33:52 MR. OAKES: Objection. Asked and answered.

09:33:54 THE COURT: It's been asked and answered but
09:33:56 that's fine.

09:33:59 MS. BIANCO: No further questions.

09:34:00 THE WITNESS: Thank you.

09:34:03 THE COURT: Do you need a moment? Are you all
09:34:05 right.

09:34:05 THE WITNESS: I'm good.

09:34:05 THE COURT: Mr. Oakes or Mr. Moody?

09:34:08 MR. OAKES: Thank you, Your Honor.

09:34:17 CROSS-EXAMINATION

09:34:18 BY MR. OAKES:

09:34:19 **Q.** Good morning, Jessica. Good morning, Ms. Howard. How are you?

09:34:37 **A.** Good.

09:34:37 **Q.** How are you feeling this morning?

09:34:39 **A.** Good.

09:34:40 **Q.** Ms. Howard, you testified to Ms. Bianco about some statements Roger told you?

09:34:48 **A.** Um hum.

09:34:49 **Q.** Roger never told you that he kidnapped Heidi Allen.

09:34:53 **A.** No.

09:34:53 **Q.** He never told you that he killed Heidi Allen.

09:34:56 **A.** No.

09:34:57 **Q.** He never told you that he disposed of her body.

09:35:00 **A.** No.

09:35:01 **Q.** He never told you what happened to Heidi Allen's body.

09:35:04 **A.** No.

09:35:05 **Q.** He never specifically told you where Heidi's body was.

09:35:08 **A.** No.

09:35:10 THE COURT: Before you ask another question, Ms. Howard, this is your chance to speak loudly enough so the people in the back can hear you.

09:35:17 THE WITNESS: Sorry.

09:35:17 THE COURT: That's all right, just make sure

09:35:18 you speak loudly. Mr. Oakes, go ahead.

09:35:21 **Q.** Now you said that on one time in the past ten years you were with your husband Andrew?

09:35:26 **A.** Yes.

09:35:27 **Q.** And Roger at McDonald's?

09:35:28 **A.** Yes.

09:35:29 **Q.** Were you guys inside the restaurant?

09:35:31 **A.** No.

09:35:31 **Q.** Were you in the drive through?

09:35:33 **A.** Yes.

09:35:33 **Q.** Okay, and were you guys talking about Heidi Allen?

09:35:39 **A.** No.

09:35:41 **Q.** So Roger, without any -- without any mention of Heidi, just suddenly said, "The bitch is not going to be found?" He just said it out of nowhere?

09:35:52 **A.** No. My husband was talking about my friend and he says well, which one would I know.

09:35:59 **Q.** Explain that to me again, Jessica, I'm sorry.

09:36:03 **A.** We were just talking about it like friends, and he said well, she knows Heidi, and that's when it came out.

09:36:11 **Q.** So your husband sometime in the last ten years told Roger that you knew Heidi Allen?

09:36:17 **A.** Yes.

09:36:18 **Q.** Heidi Allen's been gone since 1994, right?

09:36:23 **A.** Yes.

09:36:24 MS. BIANCO: Objection. He's testifying now.

09:36:26 THE COURT: I'll allow it, but don't go much
09:36:29 further, Mr. Oakes.

09:36:29 **Q.** Have you seen her since 1994?

09:36:31 **A.** No.

09:36:32 **Q.** And when Roger said these words, that "the bitch is
09:36:45 not going to be found," he didn't say how he knew that,
09:36:48 right?

09:36:48 **A.** No.

09:36:49 **Q.** And he said that she was a rat. He didn't say why
09:36:54 he thought she was a rat did he?

09:36:56 **A.** Just drugs.

09:36:57 **Q.** He didn't say that she was ratting on him did he?

09:37:02 **A.** No.

09:37:03 **Q.** And back sometime in the last ten years, he said it
09:37:11 was a waste for the government to be looking for Heidi?

09:37:14 **A.** Yes.

09:37:15 **Q.** Was there something going on at that time where they
09:37:18 were looking for Heidi?

09:37:19 **A.** I think so.

09:37:20 **Q.** Okay, well, when -- when was that? What was the
09:37:25 government doing to find Heidi at that time?

09:37:28 **A.** Must have been on the news.

09:37:31 **Q.** And you -- you told Roger that she was -- she, being
09:37:42 Heidi, was your friend, she should be found?

09:37:45 A. Yes.

09:37:46 Q. You said you knew Heidi when you were nine years old?

09:37:49 A. Yeah.

09:37:50 Q. When -- how old are you now, ma'am?

09:37:52 A. Twenty-nine.

09:37:53 Q. What year were you born?

09:37:54 A. Eighty-five.

09:37:56 Q. So you were nine years old. I think you told counsel you were living in foster care at that time?

09:38:02 A. Yes.

09:38:03 Q. And you said that Sue Allen, Heidi's mom, was your teacher?

09:38:10 A. Yes.

09:38:10 Q. What school was that?

09:38:11 A. New Haven.

09:38:12 Q. And you said that Sue Allen -- you told Sue Allen about some stuff that was going on at home?

09:38:21 A. Yes.

09:38:21 Q. And so Sue Allen brought her daughter Heidi in to meet with you?

09:38:27 A. Yes.

09:38:27 Q. How often would you meet with Heidi?

09:38:29 A. I think every day.

09:38:31 Q. Every day?

09:38:32 **A.** I think so, yes.

09:38:33 **Q.** Okay, for how long of a period of time?

09:38:37 **A.** I don't remember.

09:38:38 **Q.** Was it a week, a couple weeks, a couple months, was
09:38:42 it the whole school year, Jessica?

09:38:43 **A.** It wasn't the whole school year. Maybe a couple
09:38:50 weeks. I don't remember that much on that.

09:38:52 **Q.** And were you seeing Heidi and Heidi visiting you
09:39:04 during the time of her disappearance?

09:39:06 **A.** Yes.

09:39:09 **Q.** Now you said that sometime in the springtime in the
09:39:22 last two years you were talking with Roger again about
09:39:25 Heidi?

09:39:25 **A.** Yes.

09:39:27 **Q.** And Roger made some comments about Heidi? What did
09:39:31 he say at that point, the last two years?

09:39:34 **A.** Just the same stuff.

09:39:36 **Q.** Okay. Roger is your husband's cousin, right?

09:39:42 **A.** Uncle.

09:39:43 **Q.** Uncle. Okay, that's right. Because your mother-in-
09:39:46 law is Candy, right?

09:39:47 **A.** Right.

09:39:48 **Q.** And Roger's Candy's brother?

09:39:50 **A.** Right.

09:39:50 **Q.** And you have seen Roger around in -- the family's

09:39:54 pretty close with each other, they all interact with each other quite a bit?

09:39:57 **A.** Yes.

09:39:57 THE COURT: Can we have just a second? Do you have other witnesses coming?

09:40:01 MS. PEEBLES: Yes, Judge.

09:40:02 THE COURT: I think they're wandering back there. Do you want to have them go sit down?

09:40:09 MS. PEEBLES: Sure. Just didn't want them walking in the courtroom.

09:40:15 THE COURT: Go ahead.

09:40:16 **Q.** Okay. Now, so Roger is your husband's uncle?

09:40:25 **A.** Yes.

09:40:25 **Q.** And the Breckenridge family's pretty close, they interact with each other quite a bit?

09:40:31 **A.** Yes.

09:40:31 **Q.** Jessica, do you know that Roger's been in prison for the last two years on a grand larceny charge?

09:40:40 **A.** Yes.

09:40:40 **Q.** Okay, so can you explain to me then how you had this conversation with Roger when he's been in prison?

09:40:46 **A.** Before he went in.

09:40:48 **Q.** Okay, and what made him bring it up that day?

09:40:57 **A.** I have no idea other than --

09:40:59 **Q.** What was going on? Who was around?

09:41:02 **A.** Just my husband.

09:41:03 **Q.** Your husband Andrew was there?

09:41:04 **A.** Yeah.

09:41:05 **Q.** Was your husband Andrew there to hear these
09:41:08 admissions from Roger?

09:41:09 **A.** Yes.

09:41:10 **Q.** And did you and Andrew ever talk about those
09:41:13 admissions?

09:41:14 **A.** Of me and Heidi?

09:41:17 **Q.** No.

09:41:18 **A.** Oh, Roger.

09:41:19 **Q.** You said that Roger made admissions, or made
09:41:22 statements rather, let me rephrase it.

09:41:24 **A.** Yes.

09:41:24 **Q.** About Heidi in front of you and Andrew.

09:41:26 **A.** Right.

09:41:27 **Q.** Did you and Andrew ever talk about those statements
09:41:29 Roger made later on?

09:41:31 **A.** No, he dropped it.

09:41:34 **Q.** Now, Ms. Bianco asked you back on January eight of
09:41:43 this year, so last month, if you came to the Sheriff's
09:41:47 Department and met with investigators and members of the
09:41:49 DA's office, do you remember that?

09:41:51 **A.** Yes.

09:41:51 **Q.** And actually you met with me, Mr. Moody here, can

09:41:55 you see Mr. Moody over the box?

09:41:56 **A.** Yes.

09:41:57 **Q.** And we actually talked with you down the Sheriff's
09:42:00 Department didn't we?

09:42:00 **A.** Yes.

09:42:01 **Q.** And Jessica, at that time we told you we wanted you
09:42:06 to tell us whatever you knew about this case, right?

09:42:10 MS. BIANCO: Objection. Unsworn witness.
09:42:12 He's asking about what we said to her. He's acting as
09:42:15 an unsworn witness.

09:42:17 THE COURT: Overruled. I'll allow the
09:42:18 question.

09:42:18 **Q.** We asked you tell us everything you knew about the
09:42:21 case, right?

09:42:22 **A.** Yes.

09:42:23 **Q.** And at that time you told us about things you had
09:42:26 heard from Candy Shortsleeve, right?

09:42:28 **A.** Yes.

09:42:28 **Q.** And things that you had heard over the years from
09:42:32 other family members, right?

09:42:33 **A.** Yes.

09:42:33 **Q.** But we asked you if Roger ever said anything to you
09:42:38 didn't we?

09:42:38 **A.** Yes.

09:42:39 **Q.** And didn't you tell us no, Roger never said anything

09:42:42 in front of you?

09:42:44 **A.** I don't remember that.

09:42:47 **Q.** Jessica, you never told me and Mr. Moody about Roger
09:42:55 saying, "the bitch is not going to be found," you didn't
09:42:57 tell us that did you?

09:42:58 **A.** I thought I did.

09:43:00 **Q.** Are you unsure of whether you told us or not?

09:43:11 **A.** Yes.

09:43:12 **Q.** If you were to review the video recording of that
09:43:20 interview, would that refresh your recollection?

09:43:23 **A.** Oh, if I didn't, then I meant to. I forgot to say
09:43:27 it.

09:43:27 **Q.** Okay, at that time you didn't tell us that Roger
09:43:38 said that Heidi was a rat did you?

09:43:40 **A.** Ha?

09:43:42 **Q.** At that time you didn't tell Mr. Moody or myself
09:43:45 that Roger said Heidi was a rat, you didn't tell us that
09:43:49 did you?

09:43:50 **A.** I don't remember.

09:43:52 **Q.** Did you tell us that it was a waste of the
09:43:57 government's time?

09:43:57 **A.** That I thought I did.

09:44:00 **Q.** But you're not sure if you did?

09:44:01 **A.** No.

09:44:02 **Q.** Jessica, are you on any mental health medications at

09:44:22 this time?

09:44:22 **A.** Yes.

09:44:22 **Q.** What is that medication?

09:44:24 **A.** I don't know the names of them.

09:44:26 **Q.** What is it for?

09:44:27 **A.** Depression and anxiety.

09:44:30 **Q.** How often do you take that?

09:44:34 **A.** Every day.

09:44:36 **Q.** Did you take it today?

09:44:37 **A.** Yes, I did.

09:44:38 **Q.** Did you take it yesterday?

09:44:40 **A.** Yes, I did.

09:44:41 **Q.** Did you meet with some investigators from Oswego
09:44:45 County Sheriff's Department last evening?

09:44:47 **A.** Last night?

09:44:47 **Q.** Last night.

09:44:48 **A.** Yes.

09:44:48 **Q.** And you gave them a statement last night?

09:44:50 **A.** Yes, I did.

09:44:51 **Q.** And did you tell the investigators last night about
09:44:55 the medication that you're talking?

09:44:56 **A.** Yes, I did.

09:44:57 **Q.** And didn't you tell the investigators the medication
09:45:00 makes it hard for you to remember?

09:45:01 **A.** Yes.

09:45:02 **Q.** And you forget sometimes?

09:45:03 **A.** Yes.

09:45:04 **Q.** Does the medication make you confused sometimes
09:45:07 about facts?

09:45:09 **A.** Yes.

09:45:10 **Q.** Does it make it hard for you to clearly remember
09:45:13 events?

09:45:14 **A.** Yes.

09:45:15 **Q.** Jessica, Ms. Bianco asked you about some
09:45:30 interactions with law enforcement. I want to ask you on
09:45:33 January nineteenth of this year, did you have an
09:45:37 interaction with a member of the Sheriff's Department?

09:45:41 **A.** Yes.

09:45:43 **Q.** Had you called 911?

09:45:45 **A.** No.

09:45:46 **Q.** Okay, did somebody call 911?

09:45:48 **A.** No.

09:45:49 **Q.** You -- on that day on January nineteenth you met
09:45:55 with a deputy from the Sheriff's Department at your home
09:45:58 didn't you?

09:45:58 **A.** Yes.

09:46:01 MS. PEEBLES: Excuse me. I'm having a real
09:46:03 hard time hearing the questions. I can't hear Mr.
09:46:05 Oakes' questions.

09:46:06 THE COURT: I don't think you turned yourself

09:46:08 back on, Mr. Oakes.

09:46:09 MR. OAKES: Okay. Double check.

09:46:14 THE COURT: There you go.

09:46:16 MR. OAKES: Thank you.

09:46:17 **Q.** Jessica, you met with a deputy at your house on that
09:46:20 day didn't you?

09:46:20 **A.** Yes.

09:46:21 **Q.** Why did you meet with a deputy on that day, Jessica?

09:46:27 **A.** They called me.

09:46:28 **Q.** When the deputy met with you, did you go someplace
09:46:33 that day?

09:46:35 **A.** No. I went outside.

09:46:38 **Q.** Okay. Jessica, you talked with the deputy at that
09:46:42 time because you told the deputy you were having suicidal
09:46:45 thoughts didn't you?

09:46:48 **A.** I did.

09:46:49 **Q.** Okay, and after that day, did you go to a mental
09:46:54 health facility?

09:46:55 **A.** Yes.

09:46:55 **Q.** And you were there for approximately nine days?

09:46:58 **A.** A week and two days.

09:47:00 **Q.** Okay, and what -- what were you there for, Jessica?

09:47:04 **A.** Max depression and anxiety, homicidal and suicidal
09:47:08 tendencies.

09:47:09 **Q.** And did they put you on medications at that time?

09:47:12 **A.** Yes.

09:47:15 **Q.** And again, that's the medication you're taking now?

09:47:18 **A.** Yes.

09:47:18 **Q.** And Jessica, could your medication that you're taking that you're on now, could that be impacting your ability to remember what was said many years ago?

09:47:46 **A.** Yes.

09:47:47 **Q.** So the testimony that you're giving today, are you a hundred percent certain of that's what was said or are you kind of unsure?

09:47:56 **A.** Some of it's yes. I remember some of it, yes.

09:47:59 **Q.** Okay.

09:48:20 THE COURT: Ms. Howard, do you need water? All set?

09:48:49 (Whereupon, there was a pause in the proceeding.)

09:48:50 **Q.** Jessica, Ms. Bianco asked you about speaking with law enforcement back in 2011?

09:49:00 **A.** Yes.

09:49:00 **Q.** Do you remember those questions?

09:49:01 **A.** Yes.

09:49:02 **Q.** And originally you were speaking with law enforcement on that day because of a complaint regarding domestic violence?

09:49:10 **A.** Yes.

09:49:10 **Q.** You were in an argument I guess with your husband.

09:49:12 **A.** Yes.

09:49:13 **Q.** And at that time you told the deployed that was -- do
09:49:21 you remember it being Deputy Price? Do you remember the
09:49:23 deputy's name?

09:49:24 **A.** Yes.

09:49:25 **Q.** Was it Deputy Price?

09:49:26 **A.** I think so, yes.

09:49:27 **Q.** And at that time did you tell Deputy Price that
09:49:33 Heidi Allen's body had been found?

09:49:35 **A.** No.

09:49:36 **Q.** No? Did you tell the deputy where about Heidi
09:49:44 Allen's body was located at that point?

09:49:47 **A.** Yes.

09:49:48 **Q.** And did you tell Deputy Price that you were telling
09:49:58 him that because you wanted to get your family in trouble?

09:50:01 **A.** No.

09:50:01 **Q.** No? Now since meeting with myself and Mr. Moody
09:50:20 back in January and since this hearing started, you have
09:50:24 been conducting your own investigation regarding this case
09:50:26 haven't you?

09:50:27 **A.** Yes.

09:50:28 **Q.** You have been out trying to find information
09:50:30 regarding where Heidi's body is?

09:50:32 **A.** Yes.

09:50:32 **Q.** And you've gone to different locations?

09:50:35 **A.** Yes.

09:50:36 **Q.** And sometime in the last couple weeks, you went to a sawmill out on County Route 1A?

09:50:43 **A.** Old County Route 1.

09:50:44 **Q.** Old County Route 1, I'm sorry. And you went to an old sawmill?

09:50:48 **A.** Yes.

09:50:49 **Q.** And you saw some -- you saw a man there or men there, was it one man or a couple men?

09:50:55 **A.** One.

09:50:56 **Q.** Tall, skinny guy you said?

09:50:58 **A.** Yes.

09:50:58 **Q.** And that was while this hearing was going on, right?

09:51:00 **A.** Yes.

09:51:01 **Q.** And it's your belief that that guy was removing Heidi's body from that scene?

09:51:05 **A.** I believe so, yes.

09:51:07 **Q.** Do you know where he took the body to?

09:51:19 **A.** No.

09:51:19 **Q.** Jessica, again, we -- back when you were a child, you said you knew Heidi when you were around nine years old?

09:51:51 **A.** Yes.

09:51:51 **Q.** Now around that time, did you have an injury to your

09:51:54 leg, did you hurt your leg or hurt your leg sometime when
09:51:59 you were younger, maybe got burned?

09:52:02 **A.** I got burned.

09:52:03 **Q.** Okay, and because of the burn, your mom went out and
09:52:08 purchased you new skin?

09:52:11 **A.** Yeah. That's what she said.

09:52:14 **Q.** Okay, did your mom go out and get you new skin for
09:52:18 your leg?

09:52:19 MS. BIANCO: Objection to the relevance of
09:52:20 this new skin nonsense.

09:52:22 THE COURT: I'm going to sustain that. I'm
09:52:23 going to sustain that. Sustain the objection. You
09:52:26 don't need to answer the question.

09:52:34 MR. OAKES: No further questions, Your Honor.
09:52:37 Actually, Your Honor, can I have one moment?

09:52:40 THE COURT: Yeah.

09:52:41 (Whereupon, there was a pause in the
09:52:56 proceeding.)

09:52:56 MR. OAKES: No further questions, Your Honor.

09:53:03 REDIRECT EXAMINATION
09:53:04 BY MS. BIANCO:

09:53:05 **Q.** Jessica, I just want to do a few followup questions
09:53:08 with you, okay?

09:53:09 **A.** Okay.

09:53:09 **Q.** In 2004 when you called the police regarding

09:53:14 information about Heidi Allen, were you taking any
09:53:17 psychiatric drugs at that time?

09:53:19 **A.** No, I was not.

09:53:20 MR. OAKES: Objection, Your Honor, beyond the
09:53:21 scope.

09:53:22 MS. BIANCO: He brought it up.

09:53:24 THE COURT: You brought it up. It's within
09:53:25 the scope.

09:53:25 **Q.** The answer was?

09:53:26 **A.** No.

09:53:26 **Q.** And why were you calling them in 2004? What did you
09:53:29 want to happen?

09:53:30 **A.** I wanted them to be found. Her to be found I mean.

09:53:36 **Q.** And in 2011, when you called the police about the
09:53:41 domestic issue, the argument with your husband, were you on
09:53:45 any psychiatric medicines then?

09:53:47 **A.** No.

09:53:47 **Q.** Now the prosecutor has asked you about your recent
09:54:03 hospitalization.

09:54:04 **A.** Yes.

09:54:05 **Q.** Why were you depressed?

09:54:08 **A.** Everything.

09:54:09 **Q.** Can you give us some parts of it?

09:54:11 **A.** Like what's going on at home, this case, and me
09:54:17 trying to find evidence, I was depressed.

09:54:20 **Q.** When you say "this case."

09:54:24 **A.** Heidi Allen case.

09:54:27 **Q.** Okay, is Heidi Allen's abduction something that
09:54:30 seriously bothers you?

09:54:31 **A.** Yes, it does.

09:54:33 **Q.** And when you said you went to the -- on
09:54:37 cross-examination you went to the sawmill, what made you go
09:54:42 to the sawmill?

09:54:43 **A.** I was told that she was there.

09:54:46 **Q.** Who told you?

09:54:48 MR. OAKES: Objection, hearsay.

09:54:49 THE COURT: Sustained.

09:54:51 **Q.** You said you saw a man at the sawmill on -- on
09:54:57 cross-examination, is that correct?

09:54:58 **A.** Yes.

09:54:59 **Q.** Who was that man?

09:55:00 **A.** I have no idea.

09:55:01 **Q.** Okay, who did that man resemble? Did you ever say
09:55:04 anything about who that man resembled?

09:55:06 **A.** It looked like Gary's eyes but it -- I don't think
09:55:13 because obviously Gary's here.

09:55:15 **Q.** Did you ever say anything about Michael Bohrer?

09:55:17 MR. OAKES: Objection, Your Honor.

09:55:18 THE COURT: No, I'll allow her to answer.

09:55:21 **A.** I said it wasn't Michael Bohrer.

09:55:22 **Q.** Is there any doubt in your mind that you had conversations with Roger Breckenridge about the -- about Heidi Allen, any doubt in your mind?

09:55:31 **A.** No, no.

09:55:33 **Q.** No?

09:55:34 **A.** No.

09:55:34 **Q.** And you do remember Roger specifically talking to you about Heidi Allen's disappearance.

09:55:40 **A.** Yes.

09:55:42 MS. BIANCO: No further questions.

09:55:46 THE COURT: Any recross, Mr. Oakes?

09:55:49 MR. OAKES: No thank you, Your Honor.

09:55:51 THE COURT: Ms. Howard, thank you. You can step down.

09:55:53 THE WITNESS: Thank you.

09:55:53 THE COURT: Next witness?

09:55:55 MS. PEEBLES: We have Jonathan Barkley, Judge.

09:56:12 THE COURT: The Court will take a ten-minute break. We'll come back at five after.

09:56:38 (Whereupon, there was a recess.)

10:08:43 THE COURT: Ready, Ms. Bianco?

10:08:45 MS. BIANCO: Yes, Your Honor. The defense called Jonathan Barkley.

10:08:49 THE COURT: Thank you.

10:08:52 THE CLERK: Please stand. Raise your right

10:09:30 hand, put your left on the Bible.

10:09:34 JONATHAN BARKLEY, Called as a witness, having
10:09:35 been duly sworn, was examined and testified as follows:

10:09:35 THE CLERK: Please state your name for the
10:09:42 record.

10:09:42 THE WITNESS: Jonathan Barkley.

10:09:44 THE CLERK: Spell your last name.

10:09:45 THE WITNESS: B-A-R-K-L-E-Y.

10:09:49 THE CLERK: Have a seat please.

10:09:50 THE COURT: Mr. Barkley, before we start
10:09:52 asking any questions to you, do you consent to having
10:09:56 your testimony video taped and audio taped?

10:09:58 THE WITNESS: No.

10:10:00 THE COURT: Thank you.

DIRECT EXAMINATION

10:10:03 BY MS. BIANCO:

10:10:04 **Q.** Good morning, Mr. Barkley.

10:10:06 **A.** Good morning.

10:10:06 **Q.** How old are you?

10:10:07 **A.** Twenty-seven years old.

10:10:08 **Q.** And do you reside in Oswego County?

10:10:10 **A.** Yes, ma'am.

10:10:10 **Q.** What do you do for a living?

10:10:12 **A.** Construction.

10:10:13 **Q.** I want to ask you some questions about an individual

10:10:16 named James Steen. Do you know James Steen?

10:10:19 **A.** Yes.

10:10:20 **Q.** And how do you know him?

10:10:24 **A.** I met him handful of times when I was working at Jay
10:10:32 McGuillicuddy's shop.

10:10:34 **Q.** And when was that?

10:10:36 **A.** Roughly about five years ago.

10:10:38 **Q.** Did you see James Steen the night before he killed
10:10:42 his wife in September of 2010?

10:10:45 **A.** Yes.

10:10:46 **Q.** And where did you see him?

10:10:48 **A.** At at a party.

10:10:50 **Q.** And what type of party was it?

10:10:52 **A.** Rockapalooza.

10:10:55 **Q.** Rockapalooza?

10:10:57 **A.** Yes.

10:10:57 **Q.** And what was -- and where was that, what county?

10:11:01 **A.** It was in Oswego County.

10:11:02 **Q.** Okay, what was he driving that night?

10:11:05 **A.** A motorcycle.

10:11:09 **Q.** Did he ask you a favor that night in regards to his
10:11:13 motorcycle at the party?

10:11:16 **A.** Yes.

10:11:17 **Q.** What did he ask you?

10:11:19 **A.** Asked me if I would follow him to his house to drop

10:11:22 the motorcycle off.

10:11:23 **Q.** And did you do that?

10:11:24 **A.** Yes.

10:11:25 **Q.** That night did you speak to him during the course of
10:11:28 the party about his wife Vickie?

10:11:31 **A.** No.

10:11:32 **Q.** Did you have prior discussions with him about his
10:11:35 wife Vickie and his problems?

10:11:38 MR. OAKES: Objection, Your Honor, relevance.

10:11:40 MS. BIANCO: Well, I'm going to establish the
10:11:41 relevance, Judge.

10:11:42 THE COURT: How are you going to get by
10:11:44 hearsay?

10:11:45 MS. BIANCO: It's not offered for the truth of
10:11:47 the matter asserted that -- what he said about his
10:11:49 wife, it's to establish what they said to each other
10:11:52 that night or the night before.

10:11:53 THE COURT: I'll allow it.

10:11:55 **Q.** What did James Steen relate to you about his wife
10:11:58 and problems he was having?

10:12:00 **A.** He said that -- I don't -- I don't want to swear.

10:12:07 THE COURT: Go ahead. You won't offend
10:12:09 anybody.

10:12:09 **Q.** Unfortunately we're all swearing.

10:12:12 **A.** He said, "One day this bitch is going to push me to

10:12:14 my cracking point."

10:12:16 **Q.** Now, at the party in October of 2010, did you leave
10:12:23 with James Steen that night?

10:12:25 **A.** No.

10:12:25 **Q.** Are you aware of how he got home?

10:12:29 **A.** Yeah.

10:12:31 **Q.** How did he get transportation home?

10:12:34 **A.** He took my truck.

10:12:37 **Q.** And where did you go?

10:12:38 **A.** To Jay McGuillicuddy's house.

10:12:42 **Q.** And why did you allow him to take your truck?

10:12:45 **A.** Because I was intoxicated.

10:12:48 **Q.** And where did you sleep that night in September of
10:12:50 2010?

10:12:51 **A.** Jay McGuillicuddy's living room.

10:12:55 **Q.** And when you woke up the next morning, where were
10:12:58 you?

10:12:59 **A.** In Jay McGuillicuddy's living room.

10:13:02 **Q.** And who was in the house?

10:13:03 **A.** No one that I've remembered.

10:13:06 **Q.** Okay, where was your truck that next morning?

10:13:11 **A.** On the news.

10:13:12 **Q.** Okay, and what did you -- what did you see on the
10:13:16 news about your truck?

10:13:17 **A.** That it was used in a murder.

10:13:20 **Q.** What did you do when you saw your truck on the news?
10:13:25 **A.** I started wondering what happened or -- and I tried
10:13:29 to call Steen.
10:13:31 THE COURT: Is that what we're getting to, the
10:13:35 phone calls?
10:13:36 MS. BIANCO: Yes.
10:13:37 THE COURT: Thank you.
10:13:37 **Q.** You tried to call Steen. What number were you
10:13:40 calling from?
10:13:41 **A.** 935-1042.
10:13:45 **Q.** And that was whose phone?
10:13:46 **A.** Mine.
10:13:46 **Q.** Okay, and did you call him September twelfth, 2010
10:13:53 at approximately 12:11 p.m. about your truck?
10:13:57 **A.** Yes.
10:13:57 **Q.** Did he answer?
10:13:59 **A.** No.
10:14:00 **Q.** Who'd you call next or what happened next?
10:14:02 **A.** I tried to call Jay McGillicuddy.
10:14:08 **Q.** And what happened?
10:14:09 **A.** No answer.
10:14:11 **Q.** Okay, at 12:12, one minute later on your -- your
10:14:17 telephone, did you send a text that said, "Heidi question
10:14:23 mark ciao?"
10:14:25 **A.** No.

10:14:25 **Q.** You know that that particular text came from your
10:14:30 phone, correct?

10:14:31 MR. OAKES: Objection, Your Honor.

10:14:33 THE COURT: I'm confused in this line of
10:14:35 questioning. He just said he didn't send it.

10:14:37 MS. BIANCO: He didn't send it.

10:14:39 **Q.** Was that your phone that that text was sent from?

10:14:42 **A.** Yes.

10:14:42 MR. OAKES: Objection, foundation.

10:14:42 THE COURT: Foundation for how he knows.

10:14:45 MS. BIANCO: Judge, may I look at Exhibit 45
10:14:47 please?

10:14:47 THE COURT: Sure, yes.

(Whereupon, there was a pause in the
10:14:49 proceeding).

10:14:49 THE COURT: Did you find it?

10:14:59 MS. BIANCO: I have it. Now I just got to
10:15:02 find the right page.

10:15:21 **Q.** Showing you what's been marked Defendant's Exhibit
10:15:24 45, I'm going to ask you to take a look at entry number
10:15:29 eighty-eight. Is that your phone number that's making a
10:15:33 call, 935-1042?

10:15:35 **A.** Yes, ma'am.

10:15:37 **Q.** And who is it calling? Would that be James Steen's
10:15:44 number?

10:15:46 **A.** I don't remember.

10:15:50 **Q.** But you do know you made a call.

10:15:52 **A.** I do know I did make a call, yes.

10:15:54 **Q.** Okay, and I'm going to show you what's been marked
10:15:57 or item number ninety on page thirty-three of Exhibit 45.
10:16:05 Is that your phone number, 935-1042?

10:16:08 **A.** Yes.

10:16:09 **Q.** And the text, "Heidi question mark ciao" came from
10:16:13 your phone number?

10:16:14 **A.** Yes.

10:16:15 **Q.** Do you know who sent that text?

10:16:17 **A.** No.

10:16:18 **Q.** But you do know it came from your phone.

10:16:20 **A.** Yes.

10:16:21 MS. BIANCO: No further questions.

10:16:27 THE COURT: Just a second, Mr. Oakes.

10:16:31 MR. OAKES: Certainly.

10:16:34 (Whereupon, there was a pause in the
10:16:39 proceeding.)

10:16:39 THE COURT: Go ahead.

10:16:50 CROSS-EXAMINATION

10:16:50 BY MR. OAKES:

10:16:51 **Q.** Mr. Barkley, the night before Vickie West was
10:17:08 killed, you were at a party with James Steen?

10:17:10 **A.** Yes.

10:17:11 **Q.** He was intoxicated and had been drinking that night?

10:17:16 **A.** He --

10:17:17 **Q.** Mr. Steen had been drinking that night?

10:17:19 **A.** Yes.

10:17:20 **Q.** So he asked you before he got too intoxicated if he could drive his motorcycle home and you would bring him back to the party, essentially follow him to -- bring him back to the party so he wouldn't have to drive his bike later?

10:17:33 **A.** Yes.

10:17:33 **Q.** And you did that?

10:17:34 **A.** Yes.

10:17:35 **Q.** And at some point later that night you determined that you were too drunk to drive?

10:17:43 **A.** Yes.

10:17:43 **Q.** So you rode with Jay McGuillicuddy?

10:17:47 **A.** I called him to get a ride.

10:17:49 **Q.** Okay.

10:17:49 **A.** I don't -- I don't remember who -- exactly who came and picked me up, but I did get a ride out of there.

10:17:58 **Q.** And where did you leave your vehicle at that time?

10:18:01 **A.** At the party.

10:18:03 **Q.** And did you leave your keys with anybody?

10:18:05 **A.** No, I left them in the cup holder.

10:18:09 **Q.** Did you give James Steen permission to use your

10:18:13 truck that night or to drive it later?
10:18:15 **A.** I told him to take it to his house that night and I
10:18:20 would come get it in the morning.
10:18:23 **Q.** And so the next morning when you woke up, you were
10:18:26 at Jay McGuillicuddy's house?
10:18:28 **A.** Yes.
10:18:29 **Q.** And there was nobody else in the home as you
10:18:35 remember?
10:18:35 **A.** Not that I remember.
10:18:37 **Q.** Would you still have been intoxicated at that point?
10:18:41 **A.** Yeah.
10:18:44 **Q.** Where was Mr. McGuillicuddy if you know?
10:18:47 **A.** I don't know.
10:18:50 **Q.** And you said at some point you got a call from your
10:18:54 brother?
10:18:55 **A.** Yes.
10:18:57 **Q.** And he called you on your cell phone?
10:19:00 **A.** Yes.
10:19:01 **Q.** And is that how it is you knew you had your cell
10:19:04 phone with you?
10:19:05 **A.** What's that?
10:19:05 **Q.** Is that how you know you had your cell phone with
10:19:08 you, because your brother reached you on your cell phone?
10:19:10 **A.** Yes.
10:19:11 **Q.** Okay. And so your brother told you your truck was

10:19:15 on the news?
10:19:16 **A.** Well, I had already seen my truck on the news, and
10:19:20 then my brother had called me and said, "Do you know that
10:19:23 your truck is on the news?"
10:19:25 **Q.** What time was that ballpark?
10:19:27 **A.** I -- I can't recall.
10:19:30 **Q.** Okay, so when you saw your truck on the news, did --
10:19:37 you tried to get a hold of Jay Steen?
10:19:39 **A.** Yes.
10:19:41 **Q.** Why were you calling him?
10:19:43 **A.** To find out why my truck was on the news.
10:19:46 **Q.** And you weren't able to reach him and you left a
10:19:50 voicemail or did you leave a voicemail?
10:19:52 **A.** No, I just hung up.
10:19:54 **Q.** Now Ms. Bianco showed you a text that said, "Heidi
10:19:59 question mark ciao." Did you send that?
10:20:02 **A.** No, sir.
10:20:04 **Q.** Mr. Barkley, can you spell the Italian word ciao for
10:20:10 me?
10:20:11 **A.** I -- I don't know how to spell it.
10:20:15 **Q.** Did you know Heidi Allen?
10:20:17 **A.** No, sir.
10:20:18 **Q.** Had you ever met Heidi Allen?
10:20:21 **A.** No, sir.
10:20:22 **Q.** Had you ever had any discussions with James Steen

10:20:25 prior to the night regarding Heidi Allen?

10:20:27 **A.** No.

10:20:28 **Q.** Let me ask you, you said you were born in 1985, is 10:20:34 that correct?

10:20:34 **A.** 1987, sir.

10:20:36 **Q.** 1987. So when -- when's your birthday, what day of 10:20:43 the month?

10:20:43 **A.** On the sixth.

10:20:44 **Q.** Of which month?

10:20:45 **A.** March.

10:20:46 **Q.** Sixth of March, okay. So in April of 1994 you would 10:20:52 have been seven years old?

10:20:54 **A.** Yeah.

10:20:56 **Q.** Okay, where'd you live at that time?

10:20:59 **A.** In West Monroe in a trailer park.

10:21:06 **Q.** With who?

10:21:07 **A.** My parents.

10:21:09 MS. BIANCO: Objection to the relevance of 10:21:10 this line of questioning. No one's accusing him of 10:21:13 being involved in Heidi Allen's abduction.

10:21:15 THE COURT: What's the relevance?

10:21:17 MR. OAKES: I'm just trying to show that he 10:21:20 has no personal knowledge of the incident, Your Honor, 10:21:22 that's all.

10:21:24 THE COURT: Okay, ask him if he has any

10:21:24 personal knowledge.

10:21:25 **Q.** Okay, do you have any personal knowledge regarding the abduction of Heidi Allen?

10:21:29 **A.** No, sir.

10:21:32 **Q.** Did you -- did you send the text, "Heidi question mark ciao" to James Steen?

10:21:40 **A.** No, sir.

10:21:42 **Q.** Ms. Bianco showed you electronic records or records from cell phones. You recognize your number there being associated with that text though, right?

10:21:51 **A.** Yes.

10:21:52 **Q.** Can you offer any explanation for the Court as to where that came from?

10:21:58 **A.** I don't recall how that -- how that happened. I don't know.

10:22:02 **Q.** Let me ask you, are you familiar with or have you ever seen anybody use a spoofing program for spoofing numbers, telephone numbers?

10:22:17 **A.** No.

10:22:18 **Q.** Okay.

10:22:47 (Whereupon, there was a pause in the proceeding.)

10:23:05 **Q.** Mr. Barkley --

10:23:11 MR. OAKES: Actually, no further questions, Your Honor.

10:23:15 MS. BIANCO: Just a couple of followups.

10:23:17 THE COURT: Sure.

10:23:19 REDIRECT EXAMINATION

10:23:20 BY MS. BIANCO:

10:23:21 **Q.** Mr. Barkley, when you called Mr. Steen, the reason
10:23:29 you called him that day was you wanted to know what was
10:23:33 going on with your truck, is that right?

10:23:35 **A.** That's correct.

10:23:36 **Q.** And you had no idea why it was on the news.

10:23:39 **A.** No, ma'am.

10:23:40 **Q.** And you -- had you known or been told what was going
10:23:43 on, why the truck was on the news? What was your
10:23:48 understanding?

10:23:48 **A.** My understanding that it was used in a crime.

10:23:51 **Q.** And you said about a murder?

10:23:54 **A.** Yeah.

10:23:54 **Q.** And how did you know that?

10:23:56 **A.** When I got a -- when I got through to Jay, Jay
10:24:02 McGuillicuddy, he told me what had happened.

10:24:05 **Q.** And that was between the time of the first -- right
10:24:09 after your first call you had spoken to Jay McGuillicuddy,
10:24:13 is that right?

10:24:13 **A.** Yes, ma'am.

10:24:14 **Q.** And you found out that that -- somehow Steen was
10:24:16 involved in a murder of his wife?

10:24:18 **A.** Yes, ma'am.

10:24:19 MS. BIANCO: No further questions. Thank you, sir.

10:24:27 THE COURT: Mr. Oakes?

10:24:28 MR. OAKES: No further questions, Your Honor.

10:24:29 THE COURT: Sir, you can step down. Thank you.

10:24:31 THE WITNESS: Thank you.

10:24:33 THE COURT: Next witness?

10:24:34 MS. PEEBLES: The defense calls Deborah Vecchio.

10:24:41 THE COURT: Deb Vecchio?

10:24:43 MS. PEEBLES: Vecchio.

10:25:05 THE CLERK: Please stand. Raise your right hand, put your left on the Bible.

10:25:25 DEBORAH VECCHIO, Called as a witness, having been duly sworn, was examined and testified as follows:

10:25:27 THE CLERK: Please state your name for the record.

10:25:36 THE WITNESS: Deb Vecchio.

10:25:37 THE CLERK: Spell your last name.

10:25:38 THE WITNESS: V as in Victor, E-C-C-H-I-O.

10:25:42 THE CLERK: Have a seat please.

10:25:44 THE COURT: Ms. Vecchio, before you're asked

10:25:46 any questions, do you consent to having your testimony

10:25:48 video and audio taped?

10:25:49 THE WITNESS: I do not.

10:25:50 THE COURT: You do not. Thank you.

10:25:51 THE WITNESS: Yes.

DIRECT EXAMINATION

10:25:54 BY MS. PEEBLES:

10:25:55 **Q.** Good morning, Ms. Vecchio. How old are you?

10:25:57 **A.** I'm fifty-eight.

10:25:58 **Q.** And what is your occupation?

10:26:00 **A.** I'm a licensed social worker.

10:26:02 **Q.** Where do you live?

10:26:03 **A.** On Rice Road in Parish.

10:26:04 **Q.** How long have you lived on Rice Road?

10:26:07 **A.** Since I was eighteen.

10:26:08 **Q.** In the same house?

10:26:10 **A.** Yes.

10:26:10 **Q.** And who do you live with?

10:26:12 **A.** My husband.

10:26:13 **Q.** Who owns the property next to yours?

10:26:16 **A.** My father.

10:26:17 **Q.** And what is the address?

10:26:19 **A.** 46 Rice Road I believe.

10:26:22 **Q.** Well, when did your father acquire the property next
10:26:25 to yours on Rice Road?

10:26:27 **A.** Oh, boy. It belonged to his girlfriend. I believe

10:26:32 it was ninety or ninety-one.

10:26:32 **Q.** And prior to your father owing the property, his girlfriend owned the property?

10:26:38 **A.** Joyce Neat.

10:26:41 **Q.** And did your father when he acquired the property at Rice Road rent to any tenants?

10:26:50 **A.** He did.

10:26:51 **Q.** And why was that?

10:26:53 **A.** He lived in Florida in the wintertime and he had a trailer on the property that he leased out or I helped him to lease out.

10:27:03 **Q.** And what was your role in assisting your father in renting out that trailer?

10:27:07 **A.** I would interview the clients, and most of the time I would interview the clients and lease for him and take care of the trailer while he was gone.

10:27:16 **Q.** Now, was there any other residence on that property aside from the trailer that you're referring to?

10:27:20 **A.** There's an apartment that my father lived in.

10:27:23 **Q.** And when did he -- when did the apartment come about?

10:27:29 **A.** Early nineties.

10:27:31 **Q.** And is there any type of structure attached to the apartment?

10:27:35 **A.** Yes. There's a -- well, it -- it was a garage, it

10:27:41 was an open garage, there was no door on it, it was like a
10:27:44 lean-to type garage off of the apartment.

10:27:46 **Q.** So when your father first acquired the property, was
10:27:49 that apartment that's attached to the garage in existence?

10:27:53 **A.** We were just working on it.

10:27:55 **Q.** Now, you said your father goes to Florida or was
10:27:58 going to Florida in the wintertime?

10:28:00 **A.** Correct.

10:28:01 **Q.** And do you recall what month he would leave for
10:28:03 Florida?

10:28:04 **A.** It would vary. November, December, sometimes even
10:28:11 January.

10:28:11 **Q.** And when would he return?

10:28:13 **A.** Usually around April.

10:28:15 **Q.** And if you were renting out the trailer in his
10:28:19 absence, what typically would the lease terms be?

10:28:23 **A.** I don't know what you mean.

10:28:28 **Q.** Well, I'll reword the question.

10:28:30 **A.** Okay.

10:28:30 **Q.** What would the length of time be for the lease when
10:28:34 your father was leaving for Florida?

10:28:36 **A.** Well, he was very particular about who he rented to,
10:28:39 so usually it would be for a year, but there was a few
10:28:45 occasions where I had rented the apartment. Because he
10:28:49 didn't meet the people, the lease would only be for a few

10:28:52 months until he returned back.

10:28:54 **Q.** Now when your father returned from Florida, would he
10:28:58 then reside in the trailer or the apartment?

10:29:01 **A.** The apartment.

10:29:04 **Q.** Ms. Vecchio, I'm going to hand you what's been
10:29:08 marked as Defense Exhibit 84 and ask if you can identify
10:29:11 this document?

10:29:19 **A.** This is a lease that I had signed to some tenants
10:29:25 that I rented in 1992.

10:29:29 **Q.** And do you recall the tenants?

10:29:30 **A.** Yes, I do.

10:29:32 MS. PEEBLES: Your Honor --

10:29:33 **Q.** Is your signature on that document?

10:29:35 **A.** Yes, it is.

10:29:36 MS. PEEBLES: Your Honor, at this time I'd
10:29:38 like to offer exhibit eighty -- did I say eighty-two?
10:29:40 Eighty-four.

10:29:42 MR. OAKES: I think I know what it is but I
10:29:43 haven't seen the document.

10:29:45 MS. PEEBLES: Oh, it's the Purdy lease.

10:29:50 MR. OAKES: Can I just see it?

10:29:57 (Whereupon, there was a pause in the
10:30:06 proceeding.)

10:30:06 MR. OAKES: No objection, Your Honor.

10:30:07 THE COURT: Exhibit 84 is in without

10:30:09 objection.

(Defendant's Exhibit No. 84 was received in
10:30:10 evidence).

10:30:10 **Q.** Now, Ms. Vecchio, you executed that lease. Who --
10:30:14 who was the tenant that you had sign that lease?

10:30:16 **A.** Darcy and Tom Rathbun, at the time Darcy Russell and
10:30:22 Tom Rathbun.

10:30:22 THE COURT: I'm sorry, Darcy Russell?

10:30:24 THE WITNESS: Yes, that was her maiden name.

10:30:26 THE COURT: Thomas what?

10:30:27 THE WITNESS: Rathbun.

10:30:28 **Q.** And what was the length of time on that lease? How
10:30:34 long was that lease for?

10:30:35 **A.** I believe it was for six months.

10:30:41 **Q.** So May first?

10:30:42 **A.** Yes, May first.

10:30:44 **Q.** Of 1993?

10:30:45 **A.** Correct.

10:30:46 **Q.** Now, do you recall renting the trailer to Ms.
10:30:52 Russell at the time?

10:30:53 **A.** Yes, I do.

10:30:54 **Q.** And how do you remember renting it to her?

10:30:59 **A.** They were looking for a place to stay, they weren't
10:31:02 married, had planned on getting married, they moved in,
10:31:05 seemed like a nice couple.

10:31:07 **Q.** And do you recall how long they stayed in the trailer?

10:31:11 **A.** Not one-hundred percent, no, I don't.

10:31:14 **Q.** When did your father return from Florida?

10:31:16 **A.** He returned probably April or May.

10:31:19 **Q.** And did your father have any input with regard to whether or not they remained in the trailer?

10:31:24 **A.** Yes. He did not like them.

10:31:26 **Q.** He did not like them?

10:31:27 **A.** He did not like them as tenants, no.

10:31:29 **Q.** Why -- why did your father not like them?

10:31:31 **A.** He said that they were causing a lot of trouble in the trailer, a lot of damage, and wanted them to move out.

10:31:39 **Q.** Now, do you know an individual by the name of Jennifer Wescott?

10:31:44 **A.** Not personally, no.

10:31:46 **Q.** Do you know who she is?

10:31:48 **A.** Yes.

10:31:48 **Q.** How do you know her?

10:31:49 **A.** There was a period of time when I believe it was her mother was staying in the trailer during the winter months because of some work that was being done to her house.

10:32:01 MR. OAKES: Objection.

10:32:01 THE COURT: What winter are we talking about?

10:32:04 **Q.** What winter are we talking about?

10:32:06 **A.** I'm not really one-hundred percent sure.

10:32:09 **Q.** To the best of your recollection.

10:32:10 **A.** I'm guessing it was ninety-three, ninety-four,
10:32:13 somewhere during that time.

10:32:14 MR. OAKES: Objection, Your Honor. I guess
10:32:15 I'm going to object. The witness is saying she's not
10:32:17 sure, she's guessing.

10:32:18 THE COURT: Well, that might affect the
10:32:20 weight, but I'm trying to find out she knows Jennifer
10:32:23 Wescott's mother is what you're saying, right?

10:32:25 MS. PEEBLES: Yes.

10:32:26 THE WITNESS: I also had an altercation with
10:32:27 Jennifer.

10:32:29 THE COURT: I'll allow it.

10:32:29 MR. OAKES: Okay.

10:32:30 THE COURT: It's weight. Go ahead.

10:32:32 **Q.** I'm going to approach and hand you Defense Exhibit
10:32:34 86. Do you recognize the person or who is depicted on
10:32:46 Exhibit 86?

10:32:47 **A.** Yes, I do.

10:32:48 **Q.** Who is that?

10:32:49 **A.** It's Jennifer Wescott.

10:32:51 **Q.** I'm also going to approach and hand you what's been
10:32:57 marked as Defense Exhibit 87. Do you recognize the person
10:33:07 depicted in Defense Exhibit 87?

10:33:10 **A.** Yes. Mr. Breckenridge, Roger Breckenridge.

10:33:14 MS. PEEBLES: Your Honor, at this time I'd
10:33:16 like to offer eighty-six and eighty-seven.

10:33:18 THE COURT: Any voir dire about the IDs or any
10:33:23 objection?

10:33:24 MR. OAKES: Well, on the voir dire if I may,
10:33:29 Your Honor.

VOIR DIRE EXAMINATION

10:33:30 BY MR. OAKES:

10:33:30 **Q.** Ms. Vecchio, regarding Exhibit 86.

10:33:35 **A.** Yes.

10:33:37 **Q.** The picture. You said you believe that's Jennifer
10:33:39 Wescott?

10:33:40 **A.** Yes.

10:33:40 **Q.** Where did you first see that photograph?

10:33:43 **A.** In the newspaper. I was -- I recognized her from a
10:33:47 picture in the paper, or online, I'm not really sure which
10:33:49 one.

10:33:50 **Q.** And when was that?

10:33:51 **A.** When all this came about last summer.

10:33:56 **Q.** And prior to that, when was the last time you had
10:34:00 seen Jennifer Wescott?

10:34:02 **A.** Back in the nineties. She was young.

10:34:06 **Q.** And the individual, the other photograph, you said
10:34:12 you recognize that to be who?

10:34:14 **A.** This isn't much older than what I remember, but Mr. Breckenridge.

10:34:19 **Q.** And where did you first see that photograph?

10:34:23 **A.** Probably in the newspaper or something, this particular one or one similar.

10:34:28 **Q.** Okay, and when it was captioned in the paper, it had his name with it?

10:34:36 **A.** Yes.

10:34:37 **Q.** And prior -- well, had you met Mr. Breckenridge prior to seeing it in the newspaper?

10:34:45 **A.** I never met him personally. I saw him at certain times back in the nineties, but I never had a conversation with him.

10:34:51 **Q.** Okay, so you -- prior to seeing him in the paper, you didn't know his name, you didn't know who that was?

10:35:00 **A.** No, no.

10:35:05 **Q.** But as to Jennifer Wescott, prior to seeing the paper did you know her name? The same question.

10:35:12 **A.** When I saw the picture, her picture in the paper, I recognized her as a girl that was staying in my father's trailer at one point.

10:35:25 MR. OAKES: Your Honor, I guess I'm going to object on the admission of the photographs. Again, doesn't know the names of the individuals. Certainly as to Mr. Breckenridge, she says she doesn't know him,

10:35:37 she had seen the individual but didn't know him by
10:35:40 name, didn't know who he was prior to seeing it in the
10:35:43 paper.

10:35:44 MS. PEEBLES: Well, I can lay some more
10:35:46 foundation with that, Judge.

10:35:46 THE COURT: I'll let eighty-six in. I'm a
10:35:48 little skeptical on eighty-seven.

(Defendant's Exhibit No. 86 was received in
evidence).

10:35:50 BY MS. PEEBLES:

10:35:50 **Q.** Ms. Vecchio, when you were renting to Jennifer
10:35:53 Wescott's family, did you --

10:35:57 THE COURT: That's a mischaracterization. She
10:35:59 was never renting to her family --

MS. PEEBLES: To her mother.

10:36:01 THE COURT: -- her mother was staying in the
10:36:02 trailer.

10:36:02 **Q.** Were you renting to the Wescott family?

10:36:05 **A.** I had no contact with this family. Joyce
10:36:09 actually -- what I recall is when the Rathbuns had moved
10:36:11 out, Joyce had rented to her mother, Jennifer Wescott's
10:36:16 mother, for a short period of time during the winter
10:36:18 because I was told that they were having work done on their
10:36:21 house.

10:36:21 THE COURT: Joyce? Isn't it Darcy?

10:36:23 THE WITNESS: No. Joyce Neat is the one that owned the trailer. She's my father's girlfriend.

10:36:29 THE COURT: Okay, thank you.

10:36:29 **A.** And as far as I can remember, Darcy and Tom had moved out and the Wescotts had moved in.

10:36:36 **Q.** All right. Now, Ms. Vecchio, you say -- you stated that you recognized Ms. Wescott as the girl that was staying at the trailer when her mother was there, is that correct?

10:36:45 **A.** Correct, yes.

10:36:46 **Q.** Now did you know she had a boyfriend at the time?

10:36:49 **A.** I knew she had a friend, I didn't know what their relationship was.

10:36:54 **Q.** All right, and did you ever have any type of confrontation with Jennifer Wescott?

10:36:59 **A.** I did.

10:37:00 **Q.** Who was present when you had the confrontation with Jennifer Wescott?

10:37:03 **A.** Her boyfriend or her friend.

10:37:05 **Q.** Did you recognize her boyfriend or friend as the individual depicted in Exhibit 87?

10:37:11 **A.** I did. Much older, but I did.

10:37:14 **Q.** And he looks like the person that was standing behind her at the time?

10:37:18 **A.** Correct.

10:37:18 **Q.** Could you please tell the Court exactly what the nature of the confrontation was if you remember?

10:37:23 MR. OAKES: Objection, Your Honor. I guess I'm asking for foundation. When did this occur?

10:37:28 THE COURT: She asked the proper question. I'll allow it. We do need a time frame. When did it happen?

10:37:35 **Q.** When would this have been, Ms. Vecchio?

10:37:37 **A.** To the best of my recollection.

10:37:38 **Q.** Yes.

10:37:39 **A.** This would have been in ninety-three, ninety-four.

10:37:42 **Q.** All right, and could you please describe the nature of the confrontation that you had?

10:37:47 **A.** She had been staying in the trailer. I had seen her in and out a number of times. There was a lot of cars in and out of the driveway at different times of the day and night. I knew that my father would be coming back soon from Florida, and I told her that she had to leave. I confronted her in the driveway and said we didn't rent to you, we rented to your family, and my dad will be back and he will not be happy that you're here and you have to leave.

10:38:18 **Q.** And what -- as a result of your confrontation with Ms. Wescott, did anything occur after -- after that?

10:38:24 **A.** She left. Her and her boyfriend left shortly after

10:38:28 that, or her friend, I'm sorry.

10:38:31 **Q.** Did you remember anything about the person she was
10:38:38 with in particular when you had this confrontation with
10:38:41 her?

10:38:43 **A.** He was standing maybe ten feet behind her, looked --
10:38:48 I was kind of afraid of him.

10:38:50 **Q.** You were afraid of him?

10:38:51 **A.** Afraid of him, yes.

10:38:54 **Q.** Now, Ms. Vecchio, I want to ask you some questions
10:38:59 about your son, Darron Vecchio.

10:39:02 **A.** Yes.

10:39:02 **Q.** How old is your son right now?

10:39:05 **A.** Oh, God. He was born in seventy-seven.
10:39:09 Thirty-four, thirty-five.

10:39:11 **Q.** Roughly.

10:39:12 **A.** Okay.

10:39:13 **Q.** Does he currently reside with you?

10:39:15 **A.** No, he doesn't.

10:39:15 **Q.** Did he grow up living at 44 Rice Road?

10:39:18 **A.** He did.

10:39:19 **Q.** Did he build a structure in the woods off of Rice
10:39:22 Road?

10:39:22 **A.** He did.

10:39:22 **Q.** Do you know when he constructed this structure?

10:39:25 **A.** He was thirteen, fourteen, fifteen, somewhere in

10:39:28 there, took him a few years to build it.
10:39:30 **Q.** Do you know whose property it was that he was
10:39:32 building it on?
10:39:33 **A.** It was -- it belonged to Scorzelis, S-C-O-R-Z-E-L-I.
10:39:40 They were the neighbors at the time.
10:39:42 **Q.** And did he have permission from them to --
10:39:44 **A.** Yes, he did.
10:39:45 **Q.** And as he was constructing this structure, did you
10:39:51 ever see it?
10:39:51 **A.** Yes.
10:39:52 **Q.** Did you see it while he was building it?
10:39:56 **A.** Occasionally, yes.
10:39:57 **Q.** And how did you get back to the property where he
10:40:01 was building this?
10:40:01 **A.** He had a path that went back from the woods, from
10:40:04 the road to the -- into the woods.
10:40:07 **Q.** Now, when -- when did you go back to see this
10:40:13 completed structure that your son built back there in the
10:40:15 woods off Rice Road?
10:40:17 **A.** When?
10:40:18 **Q.** Do you remember when?
10:40:20 **A.** What year?
10:40:21 **Q.** Yes.
10:40:21 **A.** I don't know.
10:40:22 **Q.** Do you remember seeing it when it was finished?

10:40:26 **A.** Yes.

10:40:26 **Q.** Can you please describe it?

10:40:27 **A.** It was quite elaborate. It was -- had a roof, had
10:40:31 floors, had carpeting, had bunk beds, shelving, a fire pit.
10:40:37 It had everything but running water and lights.

10:40:40 **Q.** Did it have a door?

10:40:41 **A.** It did. A couple of them.

10:40:43 **Q.** Was it completely enclosed?

10:40:45 **A.** Yes.

10:40:46 **Q.** Were there any windows?

10:40:48 **A.** Yes.

10:40:49 **Q.** How many windows, do you know? If you know.

10:40:54 **A.** I would say two.

10:40:56 **Q.** Now, did there come a point in time when you
10:40:59 contacted someone about this structure that your son built
10:41:01 in the woods off of Rice Road?

10:41:03 **A.** I did.

10:41:04 **Q.** Who did you contact?

10:41:05 **A.** John O'Brien.

10:41:07 **Q.** Why?

10:41:07 **A.** I had read in the newspaper that they were looking
10:41:09 for a cabin. I wasn't -- I knew that my son's camp had
10:41:14 been back -- was there, and last I knew, I -- in the early
10:41:18 two-thousands my daughter and I had walked back there and
10:41:20 it was still standing up. I e-mailed him and asked him if

10:41:24 that camp had been checked because I knew that a lot of
10:41:27 kids hung out there during that time.

10:41:31 **Q.** All right, now I want to ask you some questions
10:41:42 about an individual named Michael Bohrer. Do you know
10:41:47 Michael Bohrer?

10:41:47 **A.** Yes, I do.

10:41:47 **Q.** How do you know him?

10:41:48 **A.** I used to take my computer to his shop and I also
10:41:51 was employed at East Coast Resorts at the same time he was.

10:41:54 **Q.** And where was this East Coast Resorts?

10:41:57 **A.** In Parish.

10:42:00 **Q.** So that wasn't in his -- at the time was not in his
10:42:04 computer shop, Medspars?

10:42:05 **A.** No.

10:42:05 **Q.** And when you refer to his computer shop, are you
10:42:07 referring to Medspars?

10:42:08 **A.** Yes, I am.

10:42:09 **Q.** When did you first meet Michael Bohrer if you
10:42:13 remember?

10:42:13 **A.** I don't remember the year. I probably had some
10:42:19 problems with my computer and went to see him.

10:42:22 **Q.** How many years had you known Michael Bohrer?

10:42:30 **A.** It was probably the early nineties.

10:42:37 **Q.** Did you ever -- did -- strike that. Do you know
10:42:41 whether Michael Bohrer had a girlfriend?

10:42:44 **A.** He did.
10:42:44 **Q.** What was her name?
10:42:46 **A.** Her name is Tina.
10:42:49 **Q.** Did you ever have any interaction with his
10:42:55 girlfriend Tina?
10:42:56 **A.** I did. She also worked at East Coast. A few times
10:43:01 she would come in and she'd be very upset or --
10:43:04 MR. OAKES: Objection, Your Honor,
10:43:05 non-responsive.
10:43:07 THE COURT: I'll sustain it.
10:43:08 THE WITNESS: She was --
10:43:11 **Q.** He sustained. I have to ask you another question.
10:43:14 It's okay. Did you ever notice anything about Tina's
10:43:17 personal appearance?
10:43:18 **A.** Yes.
10:43:20 **Q.** And could you please --
10:43:20 MR. OAKES: Objection, relevance, Your Honor.
10:43:21 THE COURT: Where are you going with this?
10:43:24 Are you getting to some alleged statement against penal
10:43:29 interest?
10:43:30 MS. PEEBLES: No, no statement.
10:43:31 THE COURT: Then how is it relevant? I'm
10:43:34 going to sustain the objection.
10:43:35 **Q.** Well, did you have interaction between Mr. Bohrer
10:43:39 and Tina when they were together?

10:43:42 **A.** Only at work.

10:43:45 **Q.** Did you ever notice any physical injuries with Tina when she was with Michael Bohrer?

10:44:07 **A.** Yes.

10:44:08 MR. OAKES: Objection, Your Honor, relevance.

10:44:09 THE COURT: Sustained.

10:44:10 MS. PEEBLES: No further questions. Thank you, Ms. Vecchio. Your Honor, I'd like to offer Exhibit 87. I know that the Court kind of reserved and I don't know if --

10:44:19 THE COURT: I'll accept it. Foundation was laid. Ms. Peebles, do you have eighty-six and eighty-seven.

10:44:27 MS. PEEBLES: I think they're right up there.

10:44:34 THE COURT: Eighty-six and eighty-seven are in.

(Defendant's Exhibit No. 87 was received in evidence).

10:44:37 MS. PEEBLES: Thank you.

10:44:47 THE COURT: Mr. Oakes, here they are.

10:44:49 MR. OAKES: Thank you, Your Honor.

10:44:51 CROSS-EXAMINATION

10:44:51 BY MR. OAKES:

10:44:52 **Q.** Good morning, Mrs. Vecchio.

10:45:23 **A.** Good morning.

10:45:23 **Q.** How are you today?
10:45:25 **A.** I'm good.
10:45:26 **Q.** Mrs. Vecchio, you've lived at your address on Rice Road for approximately forty years?
10:45:31 **A.** Um hum.
10:45:32 **Q.** And you're married to your husband David?
10:45:35 **A.** I am.
10:45:36 **Q.** And you have two sons, David and Darron?
10:45:38 **A.** Yes.
10:45:39 **Q.** What's your daughter's name?
10:45:41 **A.** Dorice (ph).
10:45:41 **Q.** Dorice, okay. And you said your dad, his name is Walter Rice?
10:45:46 **A.** Correct.
10:45:47 **Q.** And he owns a property -- well, it's not right adjacent, right next to your property, but down the road just a little ways, right?
10:45:54 **A.** Yes, um hum, yes.
10:45:56 **Q.** And so you live on the north side of Rice Road?
10:45:59 **A.** Um hum, yes.
10:46:00 **Q.** And your dad's property is also on the north side, right?
10:46:03 **A.** Correct.
10:46:05 **Q.** And his is a little bit closer to the Route 11 side?
10:46:07 **A.** Yes.

10:46:08 **Q.** Okay, and you're a little bit closer to Bengal Road, correct?

10:46:12 **A.** Correct.

10:46:13 **Q.** Now, currently there's no trailer on the property, correct?

10:46:19 **A.** That's correct.

10:46:20 **Q.** There is -- there is a structure on the property though, right?

10:46:24 **A.** Yes.

10:46:25 **Q.** And in that structure there's essentially a trailer on the inside?

10:46:30 **A.** No, it's an apartment.

10:46:32 **Q.** It's an apartment?

10:46:33 **A.** Yes.

10:46:33 **Q.** And that used to be a garage but was made into an apartment, converted at some point?

10:46:40 **A.** Correct.

10:46:40 **Q.** And then kind of a lean-to stall was put on it, correct?

10:46:45 **A.** It was a four-car garage, half of it was made into an apartment which left a garage next to that and lean-to off of the garage.

10:46:54 **Q.** Well, the dimensions that it is right now, they're not the same dimensions they were back in 1994 though, correct?

10:47:02 **A.** No, no.

10:47:04 **Q.** It's been built on and expanded over the years?

10:47:06 **A.** Off the back and the lean-to on the side, yes.

10:47:09 **Q.** So back in 1994, how big was the structure itself back then?

10:47:15 **A.** It was the -- it was the four-car garage of which we were turning half of that into an apartment.

10:47:21 **Q.** Okay, and with the four stalls, were those four stalls lined up right next to each other or were there two in the front, two in the back?

10:47:31 **A.** Yeah. This was long, it was a long building.

10:47:33 **Q.** And you said you started converting that into an apartment for your father in what year?

10:47:37 **A.** It was the early nineties.

10:47:40 **Q.** When did your dad move into it?

10:47:42 **A.** About that time. He started out in the trailer.

10:47:48 **Q.** Okay. Well, would Darron have still been in high school at that time?

10:47:54 **A.** Yes.

10:47:54 **Q.** And was your dad moved into the apartment by the time Darron had graduated?

10:48:00 **A.** Oh, yes, yes.

10:48:02 **Q.** And Darron graduated in 1993, right?

10:48:08 **A.** You probably know more about that than I do. Right around that time, yes.

10:48:13 **Q.** Okay, and so then you had the trailer, so you had the garage structure was converted to the apartment.

10:48:20 **A.** Um hum.

10:48:21 **Q.** And then your dad moved from the trailer into the garage apartment?

10:48:25 **A.** Yes.

10:48:25 **Q.** And just for the sake of comparison, I'll say trailer and I'll say garage apartment, does that --

10:48:31 **A.** Okay.

10:48:31 **Q.** -- help distinguish the two?

10:48:33 **A.** Yes.

10:48:34 **Q.** Now the trailer was actually set up on a concrete pad, right?

10:48:38 **A.** Correct.

10:48:38 **Q.** And at one point that trailer you rented to Darcy Russell and Tom Rathbun?

10:48:46 **A.** Yes.

10:48:47 **Q.** So it was the trailer itself that you had rented to them?

10:48:50 **A.** Correct.

10:48:51 **Q.** And Ms. Peebles showed you Exhibit 84 and that's the lease?

10:48:57 **A.** Yes.

10:48:57 **Q.** That you entered into with them? And that was -- if you look at the second page please.

10:49:12 **A.** Yes.

10:49:14 **Q.** That was signed on December ninth of 1992, correct?

10:49:19 **A.** Correct.

10:49:19 **Q.** And they were going to move in in January of
10:49:21 ninety-three?

10:49:22 **A.** About that, yes.

10:49:24 **Q.** And initially, again, if you look at the second
10:49:30 page, under the special agreements under number three, it
10:49:40 says they, the tenants, agree to stay or occupy the trailer
10:49:45 on Rice Road at least until May first, right?

10:49:51 **A.** Yes, yes.

10:49:52 **Q.** And then if you flip to the front page, Mrs.
10:50:02 Vecchio, at the top here (indicating), it talks in the
10:50:11 agreement the tenants agree to pay the landlord on the
10:50:13 first of each month and rent may be increased after twelve
10:50:17 months from the date of lease.

10:50:19 **A.** Yes.

10:50:19 **Q.** And you managed the property when Darcy and Tom
10:50:29 lived there?

10:50:30 **A.** Only until my father returned from Florida.

10:50:32 **Q.** And how often would you interact with Tom and Darcy?

10:50:36 **A.** A couple times a month maybe.

10:50:39 **Q.** Okay, to pick up -- would they bring the rent over
10:50:43 your place or you go over and pick it up?

10:50:45 **A.** Either one.

10:50:46 **Q.** Would you ever go just to socialize with them, talk with them?

10:50:49 **A.** No.

10:50:49 **Q.** So a professional relationship?

10:50:52 **A.** Correct.

10:50:53 **Q.** Your son Darron, did he have a social relationship with Tom and Darcy though?

10:50:58 **A.** He did.

10:51:00 **Q.** Would he go over to their trailer and visit with them?

10:51:02 **A.** Yes.

10:51:03 **Q.** How often would that be?

10:51:04 **A.** A few times a week.

10:51:08 **Q.** Okay, and basically would he go over and see them throughout the time that they lived there as far as you know?

10:51:17 **A.** For a certain length of time he did. I didn't really watch what he did all the time. I couldn't tell you that.

10:51:26 **Q.** To your knowledge, were Darcy and Tom living in that trailer when they got married?

10:51:33 **A.** I don't remember that. I do not recall when they got married. I do know that when my father returned in ninety-three, he was very upset about the living conditions of the trailer, things that had happened to it, and he

10:51:46 wanted them to move out, and I -- from there my father
10:51:50 handled it.

10:51:51 **Q.** Okay, do you know if they in fact moved out that
10:51:57 year?

10:51:58 **A.** I don't know that for one-hundred percent sure, no.

10:52:02 **Q.** Could they have worked it out with your dad and kept
10:52:04 living there?

10:52:04 **A.** No, they could not have worked it out with my
10:52:07 father.

10:52:07 **Q.** Okay. Did you own any other properties on Rice
10:52:12 Road?

10:52:12 **A.** No.

10:52:13 **Q.** Did you ever rent any other properties to Darcy and
10:52:17 Tom?

10:52:17 **A.** No.

10:52:18 **Q.** Now, is it possible that Darcy and Tom had been
10:52:44 living there in April of 1994, still have been living there
10:52:49 through ninety-four?

10:52:51 **A.** They would have had to have signed another lease and
10:52:55 I don't see that happening. That's why like I said, I only
10:52:58 took care of the property in the wintertime when my father
10:53:00 was gone, and I know that he was very unhappy with them
10:53:04 being there.

10:53:05 **Q.** Well, Mrs. Vecchio, what I'm asking -- I guess what
10:53:08 I'm asking you is you and I had talked at a prior occasion

10:53:11 at your house, correct?

10:53:12 **A.** Yes, we did.

10:53:13 **Q.** Are you a hundred percent certain that Darcy and Tom
10:53:16 weren't living there in April of ninety-four?

10:53:18 **A.** No, I can't say that one-hundred percent sure, but I
10:53:21 have a pretty strong indication that they were not, but
10:53:25 this was twenty years ago.

10:53:26 **Q.** And in twenty years, your dates could be off some,
10:53:31 off by a year maybe?

10:53:33 **A.** They may be, but I -- I did try to do some research
10:53:37 on this, and I went back through some receipts, and I
10:53:40 realized that some of these receipts were dated in the
10:53:45 winter of ninety-three, spring of ninety-four, and that's
10:53:47 when I would have been down there or had people down there
10:53:50 working in the apartment.

10:53:53 **Q.** The garage apartment?

10:53:54 **A.** Yes, which led me to believe why I would have had
10:53:59 the altercation with Jennifer Wescott during that time.
10:54:02 Otherwise, I wouldn't have known that she was there, and I
10:54:05 wouldn't have seen her come in and out so much.

10:54:08 **Q.** But Mrs. Vecchio, when you and I spoke, you had a
10:54:13 number of receipts from Lowes and other hardware stores?

10:54:17 **A.** Correct.

10:54:17 **Q.** Basically going throughout the nineties?

10:54:19 **A.** Yes.

10:54:20 **Q.** And the apartment garage that your dad lived in, would it be fair to say it was renovated a number of times throughout the nineties?

10:54:27 **A.** Not the apartment itself.

10:54:29 **Q.** But the structure itself?

10:54:30 **A.** Yes. He added on to the back, he added on to the side.

10:54:34 **Q.** And again, if that would have been the mid-nineties, ninety-five, ninety-six, ninety-seven, would renovations have been made to that structure at some point during that time period?

10:54:44 **A.** They would have, but there was also receipts from ninety-two and ninety-three and ninety-four in there as well.

10:54:49 **Q.** And again, so your recollection of Jennifer Wescott's tied to repairs being made?

10:54:56 MS. PEEBLES: Excuse me. I didn't hear that.

10:54:58 THE COURT: I didn't hear the question.

10:54:59 **Q.** Okay, I'm sorry. Your recollection of Jennifer Wescott, it's tied to certain repairs being made on the property or some type of repair work going on at the property or renovations?

10:55:13 **A.** No. I'm saying that I was at the -- I spent a great deal of time at the apartment during the first renovations of the apartment. I spent a lot of time on the property,

10:55:24 and I knew who was living in the trailer, and I knew that
10:55:28 she was there and she shouldn't have been because my father
10:55:31 would have been very upset about her being there, so I had
10:55:33 the altercation with her sometime March, April, before he
10:55:37 came back. Am I one-hundred percent sure that it was in
10:55:41 ninety-four, no, but I'm pretty sure that it was.

10:55:45 **Q.** Okay, you dealt with Darcy and Tom to actually
10:56:00 execute the lease for your dad's trailer, right?

10:56:02 **A.** The first lease, yes, or whatever the one you've
10:56:05 already showed me, yes.

10:56:07 **Q.** Okay. Did you ever execute a lease for any
10:56:14 Wescotts?

10:56:14 **A.** No.

10:56:16 **Q.** You weren't personally involved with them?

10:56:19 **A.** I met her when she moved in, that was all.

10:56:22 **Q.** Met who?

10:56:23 **A.** Mrs. Wescott, or whatever her name was. Joyce,
10:56:26 actually Joyce Neat, the owner of the trailer, is the one
10:56:30 that rented the trailer to the Wescott's mother for a
10:56:33 period of time.

10:56:33 **Q.** Okay, and Joyce was your father's companion?

10:56:37 **A.** Correct.

10:56:38 **Q.** Okay, and you said you met a woman who moved in
10:56:43 around that time that you believed to be Jennifer Wescott's
10:56:46 mom.

10:56:46 **A.** Correct.

10:56:47 **Q.** Did she ever tell you her name?

10:56:49 **A.** No. I was introduced to her as Mrs. Wescott.

10:56:54 **Q.** Okay. By Mrs. Neat?

10:56:57 **A.** Yes.

10:56:58 **Q.** Did you know her first name?

10:57:00 **A.** I -- I did, but I don't remember what it was.

10:57:03 **Q.** And you met her just that one time?

10:57:10 **A.** I would pick up the rent once a month and send it to 10:57:13 Joyce.

10:57:16 **Q.** Well, how long -- how long did that woman live 10:57:20 there?

10:57:20 **A.** Three or four months, it was just for the winter. 10:57:23 Apparently there was some work being done to their house so 10:57:27 the trailer was offered for them to stay in.

10:57:30 **Q.** Okay, and so you were picking up a check from who 10:57:35 you believed to be Mrs. Wescott?

10:57:36 **A.** Yes.

10:57:36 **Q.** Sending it to your dad in Florida?

10:57:38 **A.** Correct.

10:57:38 **Q.** Now that would have been during the wintertime, 10:57:41 right?

10:57:41 **A.** Yes.

10:57:41 **Q.** When your dad's down in Florida?

10:57:43 **A.** Yes.

10:57:44 **Q.** And you said your dad got back in April?

10:57:45 **A.** April or May, it would vary.

10:57:48 **Q.** So it would be -- I guess what I'm trying to figure out is if the Wescotts lived there during the winter, I'm just trying to piece it together, you said Mrs. Russell, Mr. Rathbun lived there essentially the winter of ninety-three. January, February, March of ninety-three, right?

10:58:10 **A.** Yes, because I rented to them in December, and they would have moved out, if they moved out after my father got back.

10:58:17 **Q.** So sometime in April-ish of ninety-three?

10:58:21 **A.** Yes.

10:58:23 **Q.** And you believe the Wescotts moved in during the winter of ninety-four?

10:58:29 **A.** I believe the Wescotts -- to the best of my recollection, I believe that Darcy and Tom moved out in the late fall of ninety-three before my father went to Florida.

10:58:43 **Q.** So if they were there in late ninety-three in the fall before your dad left, so your belief is that at least as of the fall of ninety-three, Darcy and Tom were still living there, so they weren't kicked out in May then, is that fair?

10:59:00 **A.** I couldn't tell you that. Again, I did not handle it in the summertime.

10:59:04 **Q.** Okay, but Mrs. Vecchio, I guess I'm just trying to piece together is so you think Tom and Darcy were still living there in the fall of ninety-three?

10:59:13 **A.** I believe.

10:59:14 MS. PEEBLES: Judge, she's asked and answered the same question.

10:59:16 THE COURT: I'll sustain the objection.

10:59:18 MR. OAKES: Okay.

10:59:26 **Q.** Mrs. Vecchio, do you know the exact length of time that Tom and Darcy lived there?

10:59:32 **A.** No, I don't.

10:59:33 **Q.** Okay. Do you know exactly when the woman you believe to be Wescott moved into that residence?

10:59:45 **A.** No, I don't.

10:59:46 **Q.** And again, you said you believed it to be Jen's mom that was living there?

10:59:53 MS. PEEBLES: Judge, again, asked and answered.

10:59:56 THE COURT: Sustained. I sustained.

11:00:00 MS. PEEBLES: What are we doing?

11:00:01 THE COURT: Sustained your objection.

11:00:02 **Q.** Was there anybody else, did she have a husband or partner, somebody live there with her?

11:00:06 **A.** I thought it was a husband. I'm not -- I'm not sure. I do know that he had -- I used to see them in

11:00:13 passing, and he had a wheelchair, a walker, something to
11:00:18 that effect, and he -- it was hard for him to get around.
11:00:24 **Q.** Did they have any other children living with them?
11:00:28 **A.** No. But I used to hear a baby crying.
11:00:34 **Q.** Okay, and do you know whose baby that was?
11:00:37 **A.** I do not, no.
11:00:39 **Q.** And do you know for certain the relationship between
11:00:51 Jen Wescott and the woman who was living there? Had you
11:00:53 ever been introduced to them as mother and daughter?
11:00:55 **A.** No.
11:00:56 **Q.** Was that an assumption you made?
11:00:57 **A.** That was an assumption I had made, yes, sir.
11:01:00 However, I did say to her, "You can't stay with your
11:01:03 mother," and she didn't deny that was her mother.
11:01:07 **Q.** The woman that you believe to be Jen Wescott, did
11:01:10 she have a baby at the time?
11:01:11 **A.** No. I've never -- I never saw her with a child, no.
11:01:15 **Q.** And when did you -- at what point did you tell
11:01:21 Jennifer she couldn't stay there?
11:01:22 **A.** It was early spring, it was just a month or so
11:01:26 before my father would have been back, March or April,
11:01:31 still snow on the ground.
11:01:32 **Q.** Of what year?
11:01:33 **A.** Pardon me?
11:01:34 **Q.** Of what year?

11:01:35 **A.** I couldn't tell you that. I -- if Darcy and Tom
11:01:38 moved out the end of ninety-two, then it would have been
11:01:41 the spring of ninety-three. I'm sorry, ninety-four,
11:01:45 ninety-four.

11:01:46 **Q.** And the people you were renting the trailer to, did
11:01:51 you give them access or use to the garage at that time?

11:01:54 **A.** No, no.

11:01:57 **Q.** Were there doors on the garage at that time?

11:02:01 **A.** There was -- yes, there was one door on the garage.
11:02:04 Well, there was doors on both of the garage, but one side
11:02:07 was being turned into an apartment.

11:02:10 **Q.** And the door, I mean was it a traditional garage
11:02:13 door?

11:02:14 **A.** Yes.

11:02:15 **Q.** Do you know did it have an electronic opener?

11:02:18 **A.** No.

11:02:18 **Q.** Was it locked or kept locked?

11:02:20 **A.** It was left -- it was open, it was never locked.

11:02:23 **Q.** And were the tenants allowed to have access to that?

11:02:33 **A.** I believe Tom Rathbun used it when he was there.

11:02:36 **Q.** But the woman you believe was Wescott, they didn't
11:02:41 use it?

11:02:41 **A.** I'm sure Joyce probably gave her permission to use
11:02:44 the garage. I never saw a vehicle in there, but again, I
11:02:46 never really paid it much attention.

11:02:48 **Q.** Okay, and you have described Jennifer Wescott as having a friend that you believe to be Mr. Breckenridge?

11:02:55 **A.** Yes.

11:02:55 **Q.** You said he would come by the place occasionally?

11:02:58 **A.** Yes.

11:02:59 **Q.** He wasn't living there though was he?

11:03:01 **A.** That I couldn't tell you. She wasn't living there, she was just staying there occasionally.

11:03:06 **Q.** And when you say staying there, is this like a day or two, a couple days?

11:03:10 **A.** Well, as I said, I was down there a lot doing some work, overseeing some work done in the apartment, and I saw her very frequently in and out, her and her friend.

11:03:21 **Q.** Okay, but you believed her mom was living there?

11:03:24 **A.** I did, yes.

11:03:25 **Q.** I'm not trying to be cute, your sons come and visit you?

11:03:30 **A.** Pardon me?

11:03:30 **Q.** Your sons?

11:03:30 **A.** Yes.

11:03:30 **Q.** Come and visit you?

11:03:31 **A.** Yes.

11:03:32 **Q.** It's not abnormal for kids to come visit their parents?

11:03:38 **A.** Correct.

11:03:38 **Q.** Visit frequently sometimes?

11:03:39 **A.** Correct.

11:03:39 **Q.** Doesn't mean they're living there, is that fair to say? 11:03:42

11:03:43 **A.** That's correct, but I did see her there quite late at night. 11:03:46

11:03:47 MS. PEEBLES: Judge --

11:03:47 THE COURT: Where are you going with this?

11:03:49 MR. OAKES: Well, I mean part of the defense's 11:03:51 argument is that Jennifer Wescott and Roger 11:03:54 Breckenridge were living at this residence during the 11:03:56 time period --

11:03:56 MS. PEEBLES: That is a mischaracterization of 11:03:58 our position. We've never even said that.

11:04:00 MR. OAKES: I think they have been trying to 11:04:02 establish that they have been living at that residence 11:04:04 and I'm just trying to refute the defense argument 11:04:06 that --

11:04:07 MS. PEEBLES: This is our witness we called, 11:04:08 and we stand by her testimony, what she's saying here 11:04:11 today.

11:04:11 THE COURT: He has a right to cross-examine 11:04:13 and challenge that testimony.

11:04:15 MS. PEEBLES: Which is fine, but he's making 11:04:17 statements that that is our position and it is

11:04:18 absolutely not our position.

11:04:19 THE COURT: In your motion papers it seemed to be your position that she was living at the house.

11:04:25 MS. PEEBLES: Staying at the house.

11:04:28 THE COURT: I think it's splitting hairs frankly. Move on.

11:04:48 MR. OAKES: Okay, that's fine.

11:04:48 **Q.** Darron was born in seventy-seven?

11:04:50 **A.** Correct.

11:04:51 **Q.** Okay, and you said he built the fort when he was in middle school years like thirteen, fourteen, fifteen?

11:04:59 **A.** It was a camp, yes.

11:05:02 **Q.** Okay, camp. So that would have been like ninety to ninety-two-ish ballpark?

11:05:06 **A.** Yes. Took him a few years to build it.

11:05:09 **Q.** Okay, and after he had it built, I mean through the middle school years up to fourteen, fifteen, he would go back to the camp?

11:05:17 **A.** Yes.

11:05:18 **Q.** So again, he would have been fifteen in ninety-two?

11:05:22 **A.** Correct.

11:05:23 **Q.** And when he was fifteen, sometime when he was fifteen, he started dating a girl over in Altmar, right?

11:05:32 **A.** Correct.

11:05:34 MS. PEEBLES: Objection. Relevance, Judge.

11:05:35 THE COURT: Hold on. First off, dated who?

11:05:38 MR. OAKES: Darron started dating a girl from over in Altmar, A-L-T-M-A-R.

11:05:45 THE COURT: Relevance.

11:05:46 MR. OAKES: If I can have a little leniency, Your Honor, I'm just trying to show the time period that Darron was actually using the camp, what is being maintained.

11:05:56 THE COURT: I'll allow it.

11:05:56 **Q.** And that girlfriend when he was fifteen ultimately became his wife when he got older?

11:06:02 **A.** Correct.

11:06:02 **Q.** What was her name again?

11:06:03 **A.** Sarah.

11:06:04 **Q.** Sarah. So at the time he was dating Sarah, he'd go over to Altmar and see her?

11:06:09 **A.** Yes.

11:06:10 **Q.** Actually Darron?

11:06:11 **A.** Yes.

11:06:12 **Q.** I'm sorry, David would drive him over sometimes?

11:06:13 **A.** Yes.

11:06:14 **Q.** And after he started seeing Sarah, was he still using the camp?

11:06:17 **A.** No.

11:06:18 **Q.** The fort?

11:06:19 **A.** But other people were.

11:06:20 **Q.** Okay, and you've described the camp that he had, again, it had walls, a roof?

11:06:32 **A.** Yes.

11:06:32 **Q.** Some flooring?

11:06:33 **A.** Yes.

11:06:34 **Q.** You described the carpet, the flooring. Was it actually kind of pallet that he had laid down?

11:06:41 **A.** Parts of it was cement and part of it was pallet, yes.

11:06:45 **Q.** So there wasn't floorboards in the traditional way we would think of in a house or cabin?

11:06:51 **A.** No, no.

11:06:52 **Q.** And you talked about it having a fire pit?

11:06:55 **A.** Yes.

11:06:55 **Q.** That wasn't inside of it.

11:06:57 **A.** No, no.

11:06:58 **Q.** And was it basically fifteen to twenty feet outside of the structure?

11:07:04 **A.** I couldn't tell you that. I don't know.

11:07:07 **Q.** It would -- did you ever see the fire pit?

11:07:09 **A.** Yes, yes.

11:07:10 **Q.** Was it like a dug-in pit or is it just a place where they built fires?

11:07:14 **A.** I believe he actually built -- built it like with

11:07:18 cement bricks if I remember correctly.

11:07:20 **Q.** Okay, you're not sure though?

11:07:22 **A.** I'm not sure, no.

11:07:23 **Q.** Was there ever a fireplace inside of the cabin?

11:07:25 **A.** No, not to my knowledge.

11:07:27 **Q.** Now you said at that time there was kind of an
11:07:37 entryway right from Rice Road kind of cut in the grass
11:07:40 where you could walk up to the camp?

11:07:42 **A.** There was a path back there, yes.

11:07:43 **Q.** Okay.

11:07:46 **A.** The camp is quite deep into the woods, yes.

11:07:49 **Q.** Did you have to cross railroad tracks to get to the
11:07:54 camp?

11:07:54 **A.** No.

11:07:55 **Q.** And it was located right in the woods, not in a
11:07:58 field someplace, right?

11:07:59 **A.** No, it was in the woods.

(People's Exhibit FFF was marked for identification).

(People's Exhibit GGG was marked for identification).

(People's Exhibit HHH was marked for identification).

11:10:36 MR. OAKES: (Showing to Ms. Peebles).

11:10:43 **Q.** Mrs. Vecchio, the property where your dad is living

11:10:47 now, you said you believe that's 46 Rice Road?

11:10:50 **A.** I -- I don't know if it's 46 or 48, we're 44, but
11:10:56 they kind of -- I'm not really sure what it is.

11:10:59 **Q.** Could it be sixty-eight?

11:11:01 **A.** It could be sixty-eight, yes.

11:11:03 **Q.** Let me ask you, were the houses on that road always
11:11:07 numbered in that way?

11:11:08 **A.** No.

11:11:08 **Q.** Did the number system change at some point?

11:11:12 **A.** Yes. I couldn't tell you when, but they have
11:11:14 changed.

11:11:14 **Q.** Would that have been sometime after Darcy Purdy
11:11:17 lived there, the number system changed?

11:11:20 **A.** It could have been, yes.

11:11:21 **Q.** I just want to make sure we're talking about the
11:11:23 same structure.

11:11:24 **A.** Yes, I'm sure we are.

11:11:25 MR. OAKES: Can I approach, Your Honor?

11:11:26 THE COURT: Sure.

11:11:28 **Q.** And I'm going to hand you what's been marked as FFF,
11:11:34 GGG and HHH as exhibits. Can you just look at those, Mrs.
11:11:38 Vecchio?

11:11:39 **A.** Yes.

11:11:39 **Q.** Okay, and are those pictures fair and accurate
11:11:44 photographs to show the condition of the structure where

11:11:47 your dad lives now?

11:11:48 **A.** Yes.

11:11:49 **Q.** And that's the structure we have been talking about?

11:11:51 **A.** It is.

11:11:52 MR. OAKES: I'd like to offer these exhibits,
11:11:55 Your Honor.

11:11:59 THE COURT: Have you seen the exhibits?

11:12:00 MS. PEEBLES: I just saw them. I'm not sure
11:12:03 of the relevance but I have no objection.

11:12:04 THE COURT: Okay, they're in without
11:12:08 objection.

(People's Exhibit FFF was received in
evidence).

(People's Exhibit GGG was received in
evidence).

(People's Exhibit HHH was received in
11:12:08 evidence).

11:12:08 **Q.** Okay, and Mrs. Vecchio, looking at HHH, exhibit
11:12:15 here, again, the structure we see, that's what we have been
11:12:19 referring to as basically the garage apartment?

11:12:20 **A.** Yes.

11:12:21 **Q.** Did it look like this back in ninety-four?

11:12:29 **A.** I believe the overhang off the garage was added on.
11:12:35 It didn't look like that in ninety-four, no.

11:12:37 **Q.** Okay, fair to say it was smaller?

11:12:39 **A.** Yes.

11:12:40 **Q.** Back in ninety-four?

11:12:41 **A.** It was smaller, yes.

11:12:43 **Q.** And as you look at this again, the garage apartment now, there appears to be a set of trees to the right of it, or bushes, trees?

11:12:50 **A.** Yes.

11:12:51 **Q.** Is that where the trailer would have been located?

11:12:53 **A.** It was, yes.

11:12:54 **Q.** Okay. And that garage, again, the garage apartment we're looking at, that's where your dad stayed when he came back from Florida?

11:13:14 **A.** Yes.

11:13:14 **Q.** In 1994, do you recall when your dad came back from Florida?

11:13:20 **A.** No. It would have been early spring. It would have been April or May of ninety-four.

11:13:37 **Q.** Again, in the photographs I just showed you, there is quite a bit of snow there, right?

11:13:47 **A.** Yes.

11:13:48 **Q.** In Parish where you lived, or actually where you live, it's in the Town of Mexico, right?

11:13:53 **A.** Yes.

11:13:54 **Q.** Fair to say you get a good bit of snow every year?

11:13:56 **A.** Yes.

11:13:57 **Q.** After ninety-two, when Darron started dating Sarah, did he ever go back in the woods to shovel off the cabin?

11:14:05 **A.** No. However, there were other people for a certain length of time that were using that camp. Other kids.

11:14:12 **Q.** During the winter months or during --

11:14:13 **A.** They were there a lot until Mr. Scorzeli put a stop to it.

11:14:19 **Q.** Okay, and would that have included back in ninety-four?

11:14:22 **A.** That would have included any time after Darron stopped using it.

11:14:25 **Q.** Okay.

11:14:39 MR. OAKES: One moment please, Your Honor.

11:14:42 (Whereupon, there was a pause in the proceeding.)

11:14:53 **Q.** And Mrs. Vecchio, you talked about the fort or the structure that Darron built was deep in the woods. Did it have a little creek or stream right near it?

11:15:06 **A.** It did. He had built a bridge over it.

11:15:08 **Q.** And it was located pretty close to that stream?

11:15:11 **A.** The camp, yes.

11:15:13 **Q.** Relatively?

11:15:14 **A.** Yes.

11:15:15 **Q.** The camp was built relatively close to the stream?

11:15:20 **A.** Yes.

11:15:21 MR. OAKES: At this point I have no further questions, Your Honor.

11:15:24 THE COURT: Ms. Peebles?

11:15:25 MS. PEEBLES: Just a brief couple questions.

11:15:27 THE COURT: Sure.

11:15:28 REDIRECT EXAMINATION

11:15:28 BY MS. PEEBLES:

11:15:29 **Q.** Ms. Vecchio, Mr. Oakes was asking you some questions about your son. Do you recall renting the back apartment to any of your son's friends?

11:15:40 MR. OAKES: Objection. Beyond the scope, Your Honor.

11:15:42 THE COURT: Yes. You mention something related to the camp and friends of the son, it's beyond the scope. You don't need to answer that.

11:15:51 MS. PEEBLES: Well, I think it would help to put it into context, the time frame that Mr. Oakes kept harping on.

11:15:56 THE COURT: It's beyond the scope. There's no mention of renting the camp or renting the apartment to friends of a son. Only son we know is David by name. Darron?

11:16:04 THE WITNESS: Darron's my son.

11:16:06 THE COURT: Darron built it.

11:16:08 MS. PEEBLES: Not the camp.

11:16:08 THE COURT: I understand that. That's why
11:16:09 it's beyond the scope.
11:16:10 MS. PEEBLES: No. He was asking about whether
11:16:12 she was friends with Darcy and her husband at the
11:16:15 trailer. I think it's relevant, Judge, because he's
11:16:17 been trying to confuse her about her memory.
11:16:19 THE COURT: It's beyond the scope. How's this
11:16:22 within the scope of the cross-examination?
11:16:24 MS. PEEBLES: Because he asked whether or not
11:16:25 he would socialize with Darcy, and that's not the only
11:16:28 person that he would socialize with in terms of who she
11:16:31 was renting to during that time period.
11:16:36 THE COURT: I'll allow it, very limited
11:16:38 though.
11:16:40 **Q.** Do you remember, Ms. Vecchio?
11:16:41 **A.** Yes, I did.
11:16:42 **Q.** Who was it?
11:16:43 **A.** Brian Mensch and a friend Mike. I'm not sure of his
11:16:49 last name.
11:16:49 **Q.** Do you recall when you rented to them?
11:16:51 **A.** Not exactly.
11:16:53 **Q.** Would that have been during the time when Darcy and
11:16:57 Mr. Rathbun were living there, Rathbun?
11:16:59 **A.** I don't believe so because they were about the same
11:17:03 age and they would have interacted with each other.

11:17:05 **Q.** Thank you. Now in connection with the person that
11:17:09 was disabled that you described.

11:17:10 **A.** Yes.

11:17:11 **Q.** Did there come a time when you learned who that
11:17:14 person was?

11:17:14 **A.** I thought it was her husband. I was under the
11:17:16 assumption that it was her husband, but I was later told it
11:17:20 was an uncle.

11:17:21 MR. OAKES: Objection, Your Honor, as to
11:17:23 hearsay.

11:17:23 **Q.** Who told you that?

11:17:24 THE COURT: Let's find out who told her.

11:17:26 **Q.** Who told you?

11:17:27 **A.** Mr. Oakes.

11:17:27 **Q.** So he told you it was an uncle.

11:17:29 **A.** That it was an uncle, that the father, husband, was
11:17:33 not ailing, but there was definitely an ailing person
11:17:38 living there.

11:17:39 MS. PEEBLES: No further questions.

11:17:40 THE COURT: Mr. Oakes, anything?

11:17:41 MR. OAKES: No thank you, Your Honor.

11:17:42 THE COURT: You're all set. Thank you.

11:17:44 THE WITNESS: Thanks.

11:17:47 MS. BIANCO: Your Honor, at this time I'd like
11:17:48 to recall Jessica Howard. On the trip back, my

11:17:52 investigator was driving Ms. Howard home and she -- he
11:17:57 learned that Ms. Howard gave some other information to
11:17:59 the police last night which is very, very relevant to
11:18:02 this case, and we obviously didn't receive that in this
11:18:06 report dated February fifth which we got this morning,
11:18:10 so what she was telling the police last night is
11:18:14 certainly relevant and I'd like to recall her for that.

11:18:18 MR. OAKES: Actually I'm going to object, Your
11:18:21 Honor. I presume that counsel met with Ms. Howard
11:18:24 prior to putting her on the stand.

11:18:25 MS. BIANCO: I did not this morning.

11:18:27 THE COURT: Let him finish, Ms. Bianco.

11:18:30 MR. OAKES: It's my understanding that
11:18:32 counsel, or investigator for her office, met with her
11:18:36 prior to the hearing commencing back in January. I
11:18:37 presumed they met with her closer in time to today.
11:18:40 They had every opportunity to talk with her to find out
11:18:43 whatever it is she has to tell. Again, if she's
11:18:46 telling a different story last night from what she told
11:18:48 them before, I can't help that. It's their witness,
11:18:52 they've had ample time to prepare. If they didn't
11:18:54 elicit that information from her, shame on them.

11:18:56 MS. BIANCO: Well, Your Honor, it's my
11:18:58 understanding --

11:18:58 THE COURT: Hold on. Hold on. Mr. Oakes,

11:19:00 watch the language, okay? It's not going to be an
11:19:03 issue to embarrass her.

11:19:07 MR. OAKES: Yes, Your Honor, sorry.

11:19:08 THE COURT: Did you have an opportunity to
11:19:09 speak with her this morning?

11:19:09 MS. BIANCO: I did not before I received this
11:19:11 report, no.

11:19:11 THE COURT: Did you have an opportunity to
11:19:12 speak to her after?

11:19:13 MS. BIANCO: After the report? No, I did not.
11:19:16 She just went up on the stand. No, Your Honor, I did
11:19:18 not talk to her before I received this.

11:19:22 THE COURT: Was this statement elicited from
11:19:25 questioning?

11:19:26 MS. BIANCO: A statement was not elicited --

11:19:28 THE COURT: My question is was the
11:19:30 investigator in the courtroom during her testimony.

11:19:32 MS. BIANCO: My investigator in the courtroom
11:19:34 during her testimony?

11:19:34 THE COURT: Her testimony.

11:19:35 MS. BIANCO: Yes, but this is what she
11:19:37 elicited to the police last night and this is --

11:19:40 THE COURT: That's what she said, she elicited
11:19:42 to the police?

11:19:43 MS. BIANCO: Excuse me, that she told the

11:19:45 police last night, they pooh poohed it. Essentially 11:19:47 there was a picture that she showed the police last 11:19:50 night which contains James Steen, Roger Breckenridge 11:19:55 and Heidi Allen together. She showed them the picture 11:19:58 last night. She identified the participants, they 11:20:02 weren't interested in putting it in the statement, and 11:20:04 I believe that it's very relevant to put the parties 11:20:07 together.

11:20:08 THE COURT: Mr. Oakes?

11:20:08 MR. OAKES: I don't know. Can I see the 11:20:13 photograph?

11:20:13 MS. BIANCO: It was taken off her phone. We 11:20:15 printed it out now.

11:20:22 THE COURT: Who did she speak to last night?

11:20:25 MR. OAKES: She spoke with Investigator Bucher 11:20:28 and Investigator Bray last night, Your Honor, and --

11:20:33 THE COURT: Bucher and Bray?

11:20:35 MR. OAKES: Bray, yes, Your Honor.

11:20:36 MS. BIANCO: And they gave us a CD this 11:20:38 morning. Obviously, Your Honor, I haven't had a chance 11:20:40 to review the CD of Ms. Howard because we got it this 11:20:46 morning. I don't know if there's information on the CD 11:20:48 or not. I only reviewed this report, there was no 11:20:51 mention of that picture in this report or in the cover 11:20:56 letter.

11:20:58 THE COURT: Mr. Oakes, do you know if the
11:21:00 picture was shown to investigators?
11:21:02 MR. OAKES: It was, Your Honor. In fact, the
11:21:03 investigator did mention to me that she had a
11:21:06 photograph that she claimed these three people were in,
11:21:10 but he said, "I looked at it, I don't know who it is."
11:21:13 MS. BIANCO: Again, Your Honor, this would
11:21:15 have been Brady material. It's not specified in the
11:21:17 letter, and this is yet another thing that's not being
11:21:19 disclosed to us, and it's right from last night.
11:21:30 THE COURT: Mr. Oakes, isn't it a
11:21:31 determination of whether something is Brady or not
11:21:35 actually the defense determination, not the People?
11:21:37 Were you aware of this photograph?
11:21:39 MR. OAKES: Your Honor, I was aware -- I had
11:21:41 not seen the photograph. I was aware that she had
11:21:42 shown them a photograph, and again, my understanding is
11:21:52 there was a photograph that again, I don't know if it's
11:21:56 this photograph, I'd been hearing rumors that there was
11:21:59 a photograph purportedly shown them, it was online on a
11:22:02 website, we went to it before, couldn't find it.
11:22:06 Again, if Ms. Howard has information regarding this,
11:22:10 fine. They can recall her, Your Honor.
11:22:11 THE COURT: Call her back. Is she here?
11:22:13 MS. BIANCO: She's here.

11:22:17 THE COURT OFFICER: Ms. Howard?

11:22:18 THE COURT: Sure.

11:22:29 MS. BIANCO: Could we have this marked as
11:22:30 Exhibit 145?

11:22:31 (Defendant's Exhibit 145 was marked for
11:23:04 identification).

11:23:05 MS. BIANCO: Good afternoon, Ms. Howard.

11:23:06 THE COURT: Let me see it first please.

11:23:12 MS. BIANCO: I'm sorry, Your Honor.
11:23:14 (Handing).

JESSICA HOWARD, having been recalled to the stand, testified further as follows:

DIRECT EXAMINATION

11:23:24 BY MS. BIANCO:

11:23:24 **Q.** Ms. Howard, last night you met with the members of
11:23:28 the Oswego County Sheriff's Department, is that right?

11:23:30 **A.** Yes.

11:23:31 **Q.** And did you have an occasion to show them a picture
11:23:35 you had on your phone?

11:23:36 **A.** Yes.

11:23:37 **Q.** And I'm going to show you what's been marked
11:23:40 Defendant's Exhibit 145. Is that a black and white
11:23:45 depiction of the same picture that you had on your phone?

11:23:49 **A.** Yes.

11:23:49 **Q.** And who is it a picture of?

11:23:52 **A.** Steen, Roger and Heidi.

11:23:56 **Q.** Okay, could you mark with a pen, I'm going to try and get three different colors at this point, could you mark with a green pen where Mr. Steen is located, just put an arrow by him.

A. (Indicating).

11:24:19 **Q.** And are you certain that's Mr. Steen?

11:24:27 **A.** Yes.

11:24:27 **Q.** Do you know Mr. Steen?

11:24:28 **A.** Yes.

11:24:30 **Q.** Okay, could you mark with a red pen where Mr. Roger Breckenridge is located?

11:24:38 **A.** (Indicating).

11:24:39 **Q.** Are you certain that's Mr. Roger Breckenridge?

11:24:41 **A.** Yes.

11:24:41 **Q.** And could you mark with a blue pen where Heidi Allen was located?

11:24:48 **A.** (Indicating).

11:24:49 **Q.** Are you certain that's Heidi Allen?

11:24:51 **A.** Yes.

11:24:52 **Q.** And did you show this to the police last night?

11:24:54 **A.** Yes, I did.

11:24:54 **Q.** Did they ask you to give a sworn statement about this?

11:24:57 **A.** No.

11:24:57 **Q.** What did they tell you about what you said?

11:25:00 MR. OAKES: Objection, Your Honor.

11:25:01 THE COURT: Hold on. Don't answer the
11:25:02 question. What's your basis of objection?

11:25:04 MR. OAKES: Relevance, Your Honor.

11:25:06 MS. BIANCO: Well, Your Honor, this is about
11:25:08 Brady violation and the fact that they're not taking a
11:25:10 statement from her and not interested. I think that's
11:25:12 relevant.

11:25:12 THE COURT: Well, it may be relevant, but how
11:25:16 do you get by the hearsay of what police officer said
11:25:19 to her?

11:25:19 MS. BIANCO: I believe the police officers,
11:25:20 some of which may be coming in to testify, rather than
11:25:22 recall her again, we can get what they told her, and
11:25:24 it's not offered for the truth of the matter asserted
11:25:27 about what the police officer said to her, it's about
11:25:29 their interest, what they wanted to know.

11:25:31 THE COURT: The interest was they didn't take
11:25:33 a statement, right? I'm going to sustain the objection
11:25:35 on hearsay.

11:25:36 **Q.** Did they ask you for a copy of the picture on your
11:25:39 phone?

11:25:39 **A.** No.

11:25:42 MS. BIANCO: No further questions. I'd offer

11:25:44 Exhibit 145 into evidence please.

11:25:49 MR. OAKES: Can I voir dire, Your Honor?

11:25:50 THE COURT: Sure.

VOIR DIRE EXAMINATION

11:25:59 BY MR. OAKES:

11:26:06 **Q.** Ms. Howard, did you take this photograph?

11:26:09 **A.** No.

11:26:09 **Q.** Where did you obtain this photograph from?

11:26:11 **A.** Found it on Facebook, but it was only on there for a 11:26:15 short time.

11:26:16 **Q.** You found it on Facebook. On whose Facebook page?

11:26:19 **A.** It was on the community page. It was only a short 11:26:28 time.

11:26:30 **Q.** You said it was on a community page?

11:26:32 **A.** Like everybody can read it.

11:26:34 **Q.** Okay, from what type of -- I guess I'm not following 11:26:38 you. Was it listed for a person or an organization?

11:26:42 **A.** I don't know.

11:26:44 **Q.** You don't know?

11:26:46 **A.** I just found it.

11:26:47 **Q.** Okay.

11:26:48 THE COURT: When did you find it?

11:26:50 THE WITNESS: When? Two weeks ago maybe.

11:26:56 **Q.** Okay, and have you spoken to Ms. Bianco or Ms. 11:27:01 Peebles or their investigator since you found this?

11:27:04 **A.** No.

11:27:05 **Q.** You haven't? And do you know who took this photograph?

11:27:11 **A.** No.

11:27:11 **Q.** Do you know where it was taken?

11:27:13 **A.** No.

11:27:14 **Q.** Do you know when it was taken?

11:27:15 **A.** No.

11:27:16 **Q.** You don't know the year?

11:27:17 **A.** No.

11:27:18 **Q.** Have you ever met James Steen?

11:27:25 MS. BIANCO: Objection. This is beyond voir dire at this point.

11:27:27 THE COURT: No, it's not. You -- she's allegedly positively identified Mr. Steen. It's well within.

11:27:35 **Q.** When did you first meet Mr. Steen?

11:27:39 **A.** At a party maybe?

11:27:44 **Q.** What year?

11:27:45 **A.** I don't know.

11:27:45 **Q.** Would it have been since two-thousand?

11:27:47 **A.** Yeah.

11:27:48 **Q.** Do you know what he looked like back in 1993 or ninety-four?

11:27:52 MS. PEEBLES: I'm still having a hard time

11:27:54 hearing Mr. Oakes.

11:27:55 THE COURT: I don't think you turned your --

11:27:56 MR. OAKES: Sorry, I apologize.

11:27:57 **Q.** Did you know -- did you know Mr. Steen back in 1993 11:28:01 or ninety-four?

11:28:01 **A.** No. But I know that's him.

11:28:06 **Q.** Okay, well, Mr. Breckenridge, you've met Roger 11:28:09 Breckenridge, you met him after you started dating your 11:28:13 husband Andrew, right?

11:28:14 **A.** Right.

11:28:14 **Q.** That was in 2003 you started dating --

11:28:18 **A.** Two oh-four.

11:28:19 **Q.** Two oh-four.

11:28:22 **A.** Well, three.

11:28:23 **Q.** Had you ever met Roger Breckenridge before 2004?

11:28:27 **A.** Okay, we started dating in two oh-three, but I 11:28:31 married him in 2004.

11:28:32 **Q.** Okay, so prior to 2003 though, you didn't know Roger 11:28:36 Breckenridge.

11:28:37 **A.** No, but I know that I seen baby pictures of him and 11:28:41 pictures.

11:28:42 **Q.** Do you know what he looked like back in ninety-three 11:28:44 or ninety-four?

11:28:45 **A.** Um hum (indicating).

11:28:48 **Q.** Did you know him -- you didn't know him back in

11:28:50 ninety-three, ninety-four?

11:28:51 **A.** No.

11:28:52 **Q.** And again, the person you identified here as Heidi
11:28:56 Allen?

11:28:56 **A.** Yes.

11:28:57 **Q.** How do you know that's Heidi Allen?

11:29:00 **A.** Because I know.

11:29:03 **Q.** And when -- when did you realize it was Heidi Allen
11:29:11 in this photograph?

11:29:12 **A.** When the person that posted it said it was Heidi.

11:29:17 **Q.** Okay, so you know it's Heidi because the person who
11:29:20 posted it said it's Heidi.

11:29:22 **A.** Yep.

11:29:22 **Q.** You don't independently know?

11:29:24 **A.** I know it's Heidi.

11:29:27 **Q.** Well, how -- how do you know it's Heidi? Again, I
11:29:42 guess that's what I'm trying to figure out.

11:29:44 **A.** Because I do. I just know it's Heidi.

11:29:48 **Q.** Do you know if this picture was found on a digital
11:30:02 format? You found it online, right?

11:30:04 **A.** Yeah.

11:30:05 **Q.** Do you know if it's been altered or modified in any
11:30:08 way before being put on line?

11:30:09 **A.** No.

11:30:09 **Q.** 'Cause you know people can crop photos and --

11:30:12 MS. BIANCO: Objection to what he's giving her
11:30:14 knowledge of.

11:30:14 THE COURT: That's a legitimate question.

11:30:17 **Q.** You realize --

11:30:19 MR. OAKES: I'm sorry, Your Honor.

11:30:19 **A.** Yeah, I know people could Photoshop.

11:30:21 **Q.** You have no idea whether this photograph has been
11:30:24 Photoshopped?

11:30:25 **A.** You can tell it's not Photoshopped.

11:30:27 **Q.** Do you have training in Photoshop?

11:30:30 **A.** No.

11:30:30 **Q.** Do you have training in graphic images?

11:30:33 **A.** No, but it's not.

11:30:36 **Q.** Okay, that's your belief.

11:30:37 **A.** Right.

11:30:38 **Q.** Can you tell us whether this photograph's a fair and
11:30:44 accurate picture of what these people looked like on the
11:30:47 time this picture was taken?

11:30:49 **A.** Yes.

11:30:50 **Q.** Well, do you have any personal knowledge as to when
11:30:52 this photograph was taken?

11:30:53 **A.** No.

11:30:53 **Q.** Or where it was taken?

11:30:55 **A.** No.

11:30:56 **Q.** Again, your knowledge is you found this image online

11:30:59 and you believe it -- you believe it to be those three
11:31:03 people?

11:31:03 **A.** Yes.

11:31:06 MR. OAKES: Your Honor, the People are going
11:31:10 to object to the admission of the photograph. I don't
11:31:12 believe this witness has an adequate knowledge to
11:31:14 testify that the authenticity of this photograph and
11:31:18 that it contains those people.

11:31:20 THE COURT: Ms. Bianco, how do you get by the
11:31:22 authenticity issue?

11:31:23 MS. BIANCO: Your Honor, that goes to weight,
11:31:25 not admissibility. She has identified the people in
11:31:28 the photograph. She tried to relay this to the police
11:31:30 last night who were not interested. There's no reason
11:31:33 to believe that that is Photoshopped. She's merely
11:31:36 identifying the persons in the photograph together, not
11:31:40 at a certain time.

11:31:41 THE COURT: How can she testify that it's a
11:31:43 fair and accurate depiction of Mr. Steen and Mr.
11:31:45 Breckenridge when she did not know them before 2014?

11:31:49 MS. BIANCO: Well, she stated she's seen
11:31:50 pictures of Mr. Breckenridge growing up as a baby and
11:31:54 she recognized him. The fact that she didn't know Mr.
11:31:58 Steen, she's not saying when that picture took place,
11:32:00 but she's saying --

11:32:01 THE COURT: That's the problem.

11:32:02 MS. BIANCO: -- she recognized Mr. Steen.

11:32:03 THE COURT: There is some authenticity
11:32:05 requirement to put forward. I realize she didn't take
11:32:08 the photo, but she has to say it's a fair and accurate
11:32:11 depiction of those people at that time based on some
11:32:12 knowledge of those people at that time.

11:32:14 MS. BIANCO: She's not arguing at what time,
11:32:15 she's saying those people are in the picture. Whether
11:32:18 that's the picture before ninety-four, 1990, 1991, I
11:32:22 don't know, but she's identifying the persons in the
11:32:24 picture. It's our position it goes to weight not
11:32:27 admissibility.

11:32:30 THE COURT: Mr. Oakes?

11:32:32 MR. OAKES: I made my argument. I trust in
11:32:36 your judgment, Your Honor.

11:32:38 THE COURT: Court's going to reserve. Court
11:32:39 will have an answer at one o'clock this afternoon.

11:32:43 MR. OAKES: Your Honor, would you like me to
11:32:45 give to you --

11:32:46 THE WITNESS: Am I done?

11:32:47 THE COURT: I don't know. Anything else? Who
11:32:49 are you? Who are you?

11:32:52 MS. BIANCO: I'm sorry, Your Honor, he was
11:32:53 asking me a question, not trying to give me

11:32:57 information.

11:32:57 THE COURT: This is not participatory. I know 11:33:00 this is emotional. I don't want to see this again or 11:33:03 those gentlemen will be removed. Do you understand 11:33:04 that?

11:33:05 UNIDENTIFIED PERSON: Yes, sir.

11:33:05 THE COURT: Are you done with her?

11:33:06 MS. BIANCO: Yes, Your Honor, done.

11:33:08 MR. OAKES: Yes, Your Honor.

11:33:09 THE COURT: Do you want her subject to recall? 11:33:11 Do you want her to stick around till one o'clock or 11:33:14 not?

11:33:14 MS. PEEBLES: I don't think that's necessary, 11:33:15 Judge.

11:33:15 THE COURT: Okay, you can go, Ms. Howard. Do 11:33:18 you have another witness lined up? Probably not going 11:33:20 to be resolved in twenty minutes, right?

11:33:22 MS. PEEBLES: I think maybe we could take our 11:33:24 break now and --

11:33:25 THE COURT: Come back at one?

11:33:26 MS. PEEBLES: It makes sense, Judge.

11:33:28 THE COURT: Okay, we'll be back at one. 11:33:36 Counsel? Counsel, would you please approach?

(Whereupon, there was an off the record 11:33:53 discussion at the bench).

11:33:53 (Whereupon, there was a recess.)
12:58:52 THE COURT: Before the Court is heard with
01:02:47 regard to Exhibit 145, the Court did have some
01:02:49 discussion with Ms. Peebles and Mr. Oakes about today's
01:02:52 calendar, and Ms. Peebles, you have served a subpoena
01:02:55 on an individual by the name of Brian Mensch who has
01:03:01 told you he's not basically going to appear in less
01:03:03 than favorable terms, correct?
01:03:05 MS. PEEBLES: Right, correct.
01:03:05 THE COURT: If he does not show tomorrow
01:03:07 morning, he will be invited to appear by the Sheriff's
01:03:11 Department, okay?
01:03:11 MS. PEEBLES: Thank you.
01:03:12 THE COURT: Ms. Bianco, you may have your
01:03:14 hostile witness.
01:03:15 MS. BIANCO: Finally.
01:03:15 THE COURT: Also you had subpoenaed or had
01:03:17 planned on Ms. Wescott testifying today. She's unable
01:03:20 to do so because she's caring for her grandchildren
01:03:23 today. In all honesty, if she had started today, it
01:03:28 would probably not have been good to split her
01:03:30 testimony up any ways, so you have another witness you
01:03:32 can call, correct?
01:03:33 MS. PEEBLES: Yes, Judge.
01:03:34 THE COURT: We'll plan on Mr. Mensch first if

01:03:36 the officers can get him here by nine o'clock. If not, we'll take Ms. Wescott first and he'll be last in the day.

01:03:42 MS. PEEBLES: Yes.

01:03:42 THE COURT: Any problem with that, Mr. Oakes?

01:03:43 MR. OAKES: None at all, Your Honor.

01:03:45 THE COURT: Also want to on the record say that if the defense concludes tomorrow, which you anticipate doing tomorrow, and it's relatively early in the afternoon, I'm not going to put the People first witness on. I think it's unfair to the People and I think it's unfair to Mr. Thibodeau to have a witness half done and then adjourn for five or six weeks to try to get back into the flow, so tomorrow might be an early day. Any problem with that?

01:04:08 MS. PEEBLES: No, Judge.

01:04:09 THE COURT: Any problem, Mr. Oakes?

01:04:10 MR. OAKES: That's fine, Your Honor. I guess I'm wondering so if we finish before noon or if we can't put our witness on before noon, have someone available if it's going to be afternoon?

01:04:19 THE COURT: Honestly if it's a short witness and we're done, I doubt Ms. Wescott will be done before noon.

01:04:25 MR. OAKES: I would doubt it.

01:04:27 THE COURT: Because we also have to have Mr. Mensch in the fold, so let's plan on the defense summing up tomorrow or closing tomorrow and then we'll reconvene in March.

01:04:34 MR. OAKES: Okay, that's fine, Your Honor.

01:04:36 THE COURT: Twenty-fourth, twenty-fifth, twenty-sixth and twenty-seventh.

01:04:39 MR. OAKES: Thank you.

01:04:41 THE COURT: Now I have been approached by Mr. Oakes and Ms. Peebles regarding the proposed Defense Exhibit 145. Are you, Ms. Peebles, based upon what you have said still wish to move 145 in?

01:04:52 MS. PEEBLES: Judge, not -- we do, Your Honor, wish to move it in. I guess it would be up to the Court in terms of the weight in terms of the identifications in the photograph.

01:05:02 THE COURT: Okay, Mr. Oakes, you're still opposing its introduction, correct?

01:05:09 MR. OAKES: Your Honor, I had spoke with counsel during the lunch break. If the Court wishes to receive it and then just leave it as a matter of the weight of the evidence, I would leave that to your discretion. And I think there are legal impediments for receiving it based upon her foundation and knowledge.

01:05:28 THE COURT: I ask the question why are you
01:05:29 trying to move it in? Is it to impeach Mr. Steen and
01:05:32 Mr. Breckenridge?

01:05:33 MS. BIANCO: Yes, Your Honor. They said that
01:05:34 they didn't know her.

01:05:35 THE COURT: You can't impeach your own
01:05:38 witness. You can't impeach them.

01:05:38 MS. BIANCO: I also think it has to do with
01:05:40 some Brady information that was found out last night
01:05:43 and was not disclosed to the defense.

01:05:46 THE COURT: But now you have it. It's been
01:05:48 disclosed. Let's take -- let's deal with the Brady
01:05:51 issue. You have it now. You want me to reserve a
01:05:53 right for you to do a further investigation?

01:05:55 MS. PEEBLES: I think that would be
01:05:56 appropriate actually, Judge.

01:05:57 THE COURT: Because otherwise, I will tell you
01:05:58 the Court is going to rule that it's not admissible
01:06:01 because you can't impeach your own witness, first.
01:06:03 Second, even if the Court allowed that under the Brady
01:06:05 issue, the caselaw is such that I don't believe it was
01:06:11 properly authenticated by the young lady, Ms. Howard.
01:06:13 It's something that's subject to being Photoshopped,
01:06:16 and there's even question of whether there was a
01:06:20 positive identification of one of the three individuals

01:06:22 she named. I will allow this to be Brady disclosure
01:06:26 from the People, and if you want to revisit the issue
01:06:29 even at some point during the People's case and you
01:06:35 want to try to authenticate it as new evidence, I'll
01:06:35 allow that, okay, but in terms of the Brady quality,
01:06:38 you now have it, okay, you have time to prepare for it.
01:06:41 MS. BIANCO: Thank you, Your Honor.
01:06:42 THE COURT: Fair enough?
01:06:43 MS. PEEBLES: Yes.
01:06:43 THE COURT: But at this point Exhibit 145 is
01:06:46 not in, it's been excluded.
01:06:49 MR. OAKES: Fair enough. Thank you.
01:06:50 THE COURT: So Ms. Bianco, would you come pick
01:06:53 this back up? Thank you.
01:07:01 MS. BIANCO: Thank you.
01:07:07 THE COURT: Witness?
01:07:08 MS. PEEBLES: Carmen Rojek, Your Honor.
01:07:13 THE COURT: Who is not an attorney in Oswego.
01:07:15 MS. PEEBLES: He's an investigator with the
01:07:17 Oswego County Sheriff's Department.
01:08:02 CARMEN ROJEK, Called as a witness, having been
01:08:03 duly sworn, was examined and testified as follows:
01:08:03 THE CLERK: Please state your name for the
01:08:10 record.
01:08:10 THE WITNESS: Carmen Rojek.

01:08:12 THE CLERK: Spell your first name.

01:08:12 THE WITNESS: C-A-R-M-E-N.

01:08:14 THE CLERK: And your last name.

01:08:15 THE WITNESS: R-O-J-E-K.

01:08:17 THE CLERK: Have a seat please.

01:08:18 THE COURT: Mr. Rojek, before any questions
01:08:20 are posed to you, I'm going to ask you whether you
01:08:24 consent to being or having your testimony video taped
01:08:27 and audio taped.

01:08:29 THE WITNESS: I prefer not.

01:08:30 THE COURT: Okay, thank you. Ms. Peebles.

DIRECT EXAMINATION

01:08:34 BY MS. PEEBLES:

01:08:34 **Q.** Investigator Rojek, how long have you been with the
01:08:37 Oswego County Sheriff's Department?

01:08:38 **A.** Since June of 1997.

01:08:40 **Q.** Were you assigned during your time -- well, strike
01:08:44 that. What were the positions that you have held during
01:08:46 your time with the Oswego County Sheriff's Department?

01:08:48 **A.** From ninety-seven to 2008, road patrol officer.
01:08:52 From 2008 to current, investigator.

01:08:58 **Q.** So you have been an investigator now for
01:09:00 approximately seven years?

01:09:01 **A.** Correct.

01:09:02 **Q.** Now were you at any time assigned to follow up on

01:09:05 leads in connection with the Heidi Allen case?

01:09:07 **A.** Yes, I was.

01:09:08 **Q.** When were you first given an assignment in
01:09:11 connection with the Heidi Allen case?

01:09:13 **A.** March first, 2013.

01:09:14 **Q.** And could you please explain what your -- what your
01:09:18 task was in connection with the Heidi Allen case?

01:09:21 **A.** It was to meet with Tonya Priest and complete a
01:09:24 controlled phone call to Jennifer Wescott.

01:09:26 **Q.** And did you do that?

01:09:27 **A.** Yes.

01:09:28 **Q.** Which day did you meet?

01:09:30 **A.** We met on two dates. It was March first and March
01:09:33 second. On March second the phone call was completed.

01:09:37 **Q.** Now, as an investigator, you use monitored or
01:09:41 controlled phone calls as an investigative tool?

01:09:44 **A.** Yes.

01:09:44 **Q.** What is the purpose in using this type of tool when
01:09:48 you're investigating a case?

01:09:50 **A.** Well, one of the purposes is to corroborate what the
01:09:53 victim or witness is telling me.

01:09:55 **Q.** And --

01:09:55 **A.** Regarding that other person on the line.

01:09:57 **Q.** Could you give us an idea about how many controlled
01:10:01 or monitored calls you have been involved in since you have

01:10:04 been an investigator?

01:10:05 **A.** Well over a hundred.

01:10:07 **Q.** Now, could you please describe the usefulness of
01:10:15 these monitored calls once you've done them as an
01:10:18 investigative tool?

01:10:20 **A.** Well, it's an element of surprise on the person that
01:10:23 we're calling where they don't expect the call to be
01:10:26 completed and discuss whatever you want them to discuss on
01:10:30 the phone.

01:10:30 **Q.** And in preparation for conducting a controlled call,
01:10:34 do you assist the person that's making the call?

01:10:37 **A.** Yes, I do.

01:10:38 **Q.** And who typically, generally speaking, when you're
01:10:42 conducting a controlled call, who are you working with when
01:10:46 you're preparing to make a call to a -- either a suspect or
01:10:49 someone who has information?

01:10:50 **A.** Either a witness or a victim.

01:10:55 **Q.** Now in this particular case, could you please
01:11:00 describe the setup of when you were going to make this
01:11:04 controlled call with Tonya Priest?

01:11:06 **A.** Well, we were planning on March first, it was right
01:11:09 around probably eleven p.m. March first from the District
01:11:14 Attorney's Office. As I remember, Jennifer Wescott was
01:11:17 communicating with Tonya Priest via Facebook, and she told
01:11:21 Tonya Priest that her oldest child, I think was a boy, had

01:11:27 her cell phone, so she was unable to make a verbal
01:11:30 communication with her that night, and she told her that
01:11:32 she would contact her the next day. Jennifer Wescott told
01:11:36 Tonya Priest.

01:11:37 **Q.** Before we get to the next day, who to your knowledge
01:11:42 was Jennifer Wescott? Why were you making this particular
01:11:45 call?

01:11:46 **A.** Well, Jennifer Wescott was the person that Tonya
01:11:50 Priest was alleging had information regarding Heidi Allen.

01:11:55 **Q.** Now, the following day would be March second of 2013
01:12:02 when you conducted the controlled call?

01:12:04 **A.** Correct.

01:12:04 **Q.** And could you please describe what happened on that
01:12:07 day?

01:12:08 **A.** Well, I met with Tonya Priest in the District
01:12:12 Attorney's Office. We were utilizing the library to make
01:12:15 the phone call. I believe we made some attempts, but
01:12:19 Jennifer Wescott wasn't answering, and at one point a child
01:12:26 phoned -- she was using her cell phone to make the
01:12:29 controlled phone call with. A child phoned her phone, it
01:12:33 was just child talk, nothing where an adult was talking.
01:12:39 That hung up, and then soon after that, Jennifer Wescott
01:12:43 called.

01:12:43 **Q.** And how was it -- how was the controlled call being
01:12:47 monitored?

01:12:48 **A.** I was using a digital voice recorder. I used headphones to listen in on the conversation with and an earbud to place in Tonya Priest's -- her ear.

01:13:00 **Q.** So could you hear what was being said on the other end of the phone?

01:13:04 **A.** Correct.

01:13:05 **Q.** So you could hear what Tonya Priest was saying, and you could also hear how Jennifer Wescott was responding or what she was saying?

01:13:13 **A.** Correct.

01:13:13 **Q.** Now, in preparation for this monitored call, was there some type of pretext that you came up with in order to get her to start talking?

01:13:21 **A.** Well, she developed a theme to use, her ex, Rubin, that he had information regarding knowledge of Heidi Allen, and he was going to use that to gain access to her journal. It was just a theme built to get an in with Jennifer Wescott.

01:13:41 **Q.** And who came up with the theme?

01:13:43 **A.** She did, Tonya Priest.

01:13:44 **Q.** And were you in agreement with that particular theme?

01:13:47 **A.** Yes.

01:13:47 **Q.** And when you're using themes if you will for monitored phone calls, why's that an important thing to do?

01:13:59 **A.** You don't want to alert the person on the other end, you don't want to be right in their face. They're more likely to tell you nothing or just hang up on you. You want to minimize what you want on the phone with them.

01:14:14 **Q.** Now, I'm going to ask you during the course of the conversation were you writing any kind of notes to Tonya Priest to tell her what to say?

01:14:26 **A.** Yes.

01:14:27 **Q.** What to ask. Do you recall what questions you were asking her?

01:14:35 **A.** Not specifically.

01:14:37 **Q.** If I showed you your notes, would that refresh your recollection?

01:14:40 **A.** Yes.

01:14:44 **Q.** I'm going to hand you what's been marked as Defense Exhibit 136 and ask if you could read your notes to yourself and see if that helps refresh your recollection about what you asked or what you were telling her to ask Jennifer Wescott.

01:14:57 (Whereupon, there was a pause in the proceeding.)

01:15:37 **A.** Okay, as I remember, she didn't say everything that I wanted her to, she used her own dialogue for most of it.

01:15:45 **Q.** Did you tell her to ask if she didn't come in the house, where did they bring her?

01:15:52 **A.** Yes.

01:15:53 **Q.** Is that one of the questions? And did you tell her to ask who actually killed her?

01:16:00 **A.** Yes.

01:16:01 **Q.** And did you ask, "Did you ever think of turning them in," was that your question?

01:16:06 **A.** Yes.

01:16:06 **Q.** And did you tell her to ask, "Tell me what you saw when they brought Heidi in the van to your house?"

01:16:15 **A.** Yes.

01:16:17 **Q.** And do you remember whether Wescott during the phone conversation indicated whether she was afraid to say anything to anybody?

01:16:23 **A.** Yes.

01:16:23 **Q.** Do you remember if she named anybody?

01:16:27 **A.** Well, actually as I remember, Tonya injected that into her -- I think she said, "You were afraid of Roger."

01:16:36 **Q.** Um hum.

01:16:36 **A.** And she agreed.

01:16:38 **Q.** And did she name anyone else she was afraid of?

01:16:40 **A.** You know, I'd have to listen to the phone call.

01:16:43 **Q.** Did you hear her say the name Dan Barney?

01:16:48 MR. OAKES: Objection, Your Honor, as to hearsay.

01:16:51 THE COURT: Yes, it's hearsay. Don't answer

01:16:55 the question, investigator. It's not falling into --
01:16:58 apparently trying to fall into the issue of the
01:17:00 statement against penal interest.

01:17:01 MS. PEEBLES: No, Judge.

01:17:02 THE COURT: That's hearsay.

01:17:03 MS. PEEBLES: Well, I guess it's just a
01:17:05 question of what was done to follow up on the
01:17:07 information that was elicited during the phone call.
01:17:09 I'm not offering it for the truth of the matter other
01:17:11 than whether it was said.

01:17:13 THE COURT: Mr. Oakes?

01:17:15 MR. OAKES: I think she can ask the
01:17:17 investigator, being laid as an investigative
01:17:21 foundation, just ask him based upon what you heard,
01:17:23 what did you next.

01:17:24 THE COURT: Why don't you do that without
01:17:26 mentioning names.

01:17:27 **Q.** Other than Roger, her being afraid of Roger, were
01:17:30 there other names that were mentioned during the phone
01:17:32 call?

01:17:32 **A.** Yes.

01:17:32 MR. OAKES: Objection, Your Honor.

01:17:33 THE COURT: No, this is foundational, I'll
01:17:35 allow that.

01:17:36 **Q.** Were there other names mentioned during the phone

01:17:39 call?

01:17:39 **A.** Yes.

01:17:40 **Q.** As a result of those names, do you know what
01:17:45 followup investigation was conducted?

01:17:47 **A.** After the phone call?

01:17:49 **Q.** Yes.

01:17:49 **A.** I gave the -- I burned it to a CD and I gave that CD
01:17:53 to Investigator Pietroski.

01:17:56 **Q.** Were you involved in the followup investigation at
01:18:00 that point after the monitored phone call?

01:18:02 **A.** No.

01:18:03 **Q.** And do you know why you were involved in doing the
01:18:06 monitored phone call?

01:18:07 MR. OAKES: Objection, relevance.

01:18:10 THE COURT: Yeah. What is the relevance of
01:18:11 why he was involved?

01:18:12 MS. PEEBLES: I'm just trying to gauge what
01:18:14 his involvement was during this time period so -- and
01:18:18 why Pietroski wasn't doing the audio.

01:18:22 THE COURT: I'll allow it I guess.

01:18:24 **Q.** Do you know?

01:18:25 **A.** I was advised by my lieutenant, Ken Pitcher, to take
01:18:32 over at this point, which was on March first, and meet with
01:18:35 Tonya Priest to make the controlled phone call. That was
01:18:39 my goal.

01:18:39 **Q.** And after that did you have any other assignments at
01:18:42 that time in connection with this followup investigation?
01:18:46 **A.** In time but not immediately after that.
01:18:48 **Q.** Were you involved at all with regard to the
01:18:53 interview of Jen Wescott on March seventh of 2013?
01:18:57 **A.** No.
01:18:58 **Q.** Did there come a point in time where you ever
01:19:02 listened to the March seventh, 2013 interview of Jen
01:19:06 Wescott?
01:19:06 **A.** Yes.
01:19:06 **Q.** And did you take notes?
01:19:08 **A.** Yes, I did.
01:19:09 **Q.** And did you compare her audio recording with -- with
01:19:14 the notes that you took after you listened to the
01:19:15 interview?
01:19:16 **A.** Well, the notes I took were in preparation of -- I
01:19:19 was planning on meeting with her and interviewing her
01:19:22 myself, so I'd listen to Investigator Pietroski's interview
01:19:26 with her first to get information in how to theme my
01:19:31 interview with Jennifer.
01:19:32 **Q.** And did you notice a difference between what was
01:19:37 stated on the monitored call that you were involved in
01:19:40 versus what you heard when you were listening to the
01:19:42 interview between Mr. Pietroski, Investigator Pietroski and
01:19:45 Jen Wescott?

01:19:46 MR. OAKES: Objection, Your Honor.

01:19:47 THE COURT: What's the objection?

01:19:49 MR. OAKES: Relevance.

01:19:50 THE COURT: I'll allow it.

01:19:52 **A.** Now could you rephrase that? I don't understand 01:19:54 what you --

01:19:55 **Q.** Yeah. Did you notice a difference between what Ms. 01:19:59 Wescott said during her interview with Investigator 01:20:02 Pietroski on March seventh of 2013 versus what you heard 01:20:06 when you were monitoring the phone call on March second of 01:20:09 2013?

01:20:11 **A.** I still don't understand. You want a difference in 01:20:16 the interview with Pietroski to what I heard?

01:20:19 **Q.** Well, let me ask you this. Did Jen Wescott deny the 01:20:22 contents of the phone call during her initial -- during -- 01:20:25 initially during her interview with Investigator Pietroski?

01:20:28 **A.** As I remember, she denied having a communication 01:20:31 with Tonya.

01:20:32 **Q.** And did she eventually admit that she had a 01:20:41 conversation with Tonya Priest?

01:20:42 **A.** Yes.

01:20:43 **Q.** And when -- during the course of the interview, when 01:20:48 was that?

01:20:49 **A.** With Investigator Pietroski?

01:20:51 **Q.** Yes.

01:20:52 **A.** I don't know where in the interview, but she did
01:20:55 admit to receiving a phone call from Tonya.

01:20:57 **Q.** Was it after he confronted her with the fact that
01:20:59 there was a monitored phone call?

01:21:01 **A.** Yes.

01:21:01 **Q.** Now was there an effort to re-interview Ms. Wescott
01:21:08 at some point in time?

01:21:10 **A.** Yes.

01:21:10 **Q.** And when was that?

01:21:12 **A.** August fourth, 2014.

01:21:14 **Q.** Were you involved in that?

01:21:15 **A.** Yes, I was.

01:21:16 **Q.** Was anyone else present with you?

01:21:21 **A.** District Attorney Oakes.

01:21:23 **Q.** And how long was that interview?

01:21:27 **A.** The total interview was over four hours.

01:21:31 **Q.** And prior to the interview of August of -- that was
01:21:35 2014, correct?

01:21:37 **A.** Correct.

01:21:37 **Q.** And prior to that interview, do you know whether Mr.
01:21:40 Oakes had any other meeting with Ms. Wescott before that?

01:21:43 MR. OAKES: Objection, foundation.

01:21:45 THE COURT: What's the relevance?

01:21:50 MS. PEEBLES: Well, it's in preparation for
01:21:53 this re-interview of her, so I kind of think it's

01:21:55 relevant.

01:21:56 THE COURT: How's it relevant if he knows that
01:21:58 Mr. Oakes spoke to her before he spoke to her unless he
01:22:01 was present?

01:22:01 MS. PEEBLES: They basically used that in
01:22:04 order to prepare for the interview of her in 2014 so --

01:22:08 THE COURT: Okay, I'll allow it, but don't ask
01:22:11 him any questions about what Mr. Oakes may have said to
01:22:13 Ms. Wescott.

01:22:14 MS. PEEBLES: I won't.

01:22:15 THE COURT: Or anything she may have said to
01:22:16 him. Okay, thank you.

01:22:17 **Q.** Investigator Rojek, did you know whether or not Ms.
01:22:22 Wescott had been interviewed before the re-interview by Mr.
01:22:27 Oakes before you met with her in August of 2014?

01:22:29 **A.** Yes.

01:22:31 **Q.** And did you do -- did you discuss that in
01:22:35 preparation for the August of 2014 interview?

01:22:38 **A.** Yes.

01:22:39 **Q.** And what was the course of action after the meeting
01:22:46 Mr. Oakes had at Sal Lanza's office with Jennifer Wescott?

01:22:52 MR. OAKES: Objection, Your Honor.

01:22:53 THE COURT: I'm not sure if I understand the
01:22:54 question. I apologize.

01:22:55 MS. PEEBLES: I'm not sure I understood the

01:22:57 question.

01:22:57 THE COURT: Ask the question.

01:23:00 MS. PEEBLES: I'll strike it.

01:23:01 **Q.** After the meeting with -- at Sal Lanza's office, a
01:23:08 re-interview was schedule in August of 2014, right?

01:23:12 **A.** Correct.

01:23:12 **Q.** And how did -- how did that come about?

01:23:17 **A.** DA Oakes set up an interview to meet with Jennifer
01:23:22 Wescott through Sal Lanza.

01:23:24 **Q.** And was he present? I guess that's what I'm getting
01:23:27 at. Was he present during this re-interview in August of
01:23:30 2014?

01:23:31 MR. OAKES: Is he referring to attorney Lanza?

01:23:33 MS. PEEBLES: Sal Lanza.

01:23:35 THE COURT: Okay, that's what I want to find
01:23:36 out.

01:23:36 **A.** Attorney Lanza was not present.

01:23:38 **Q.** Was he available by phone at any point in time?

01:23:40 **A.** He was available.

01:23:40 **Q.** Was there an arrangement that was made?

01:23:42 **A.** There was.

01:23:43 **Q.** And who made the decision to have you rather than
01:23:59 Investigator Pietroski interview Jennifer Wescott in August
01:24:03 of 2014, do you know?

01:24:04 MR. OAKES: Objection. What's the relevance, 01:24:06 Your Honor?

01:24:06 THE COURT: Yeah, what's the relevance, Ms.
01:24:08 Peebles?

01:24:10 MS. PEEBLES: Well, I'm going to ask him if
01:24:12 there was.

01:24:12 THE COURT: Well, why's it relevant who
01:24:14 assigned him and who decided? I'm going to sustain the
01:24:17 objection.

01:24:17 **Q.** Did you talk to Investigator Pietroski before you
01:24:20 did this interview with Jennifer Wescott?

01:24:21 **A.** Yes, I did.

01:24:22 **Q.** And did you discuss the previous interview of
01:24:25 Jennifer Wescott with Pietroski?

01:24:27 **A.** I didn't discuss the content of the interview, I
01:24:30 just let him know that I was going to be interviewing
01:24:34 Jennifer Wescott.

01:24:35 **Q.** Now, during the course of your interview in August
01:24:44 of 2014 with Jennifer Wescott, you confronted her with the
01:24:49 audio recording, correct?

01:24:51 **A.** Correct.

01:24:51 **Q.** And you wanted to play that audio recording for her,
01:24:55 correct?

01:24:55 **A.** Correct.

01:24:55 **Q.** And she didn't want you to play that recording,
01:24:58 right?

01:24:59 **A.** Correct.

01:24:59 **Q.** Did you play the whole recording for her?

01:25:03 **A.** Not the whole recording. Some of it.

01:25:06 **Q.** Now you knew -- well, I should ask you. Did you know whether she had given a previous statement under oath after her initial interview with Investigator Pietroski in 2013?

01:25:22 **A.** A written statement?

01:25:23 **Q.** Yes.

01:25:23 **A.** Yes.

01:25:24 **Q.** And did you have an opportunity to review the written statement?

01:25:27 **A.** Yes, I did.

01:25:29 **Q.** Was there a concern regarding whether she was exposed for executing a false statement?

01:25:37 MR. OAKES: Objection, relevance. Concern by whom, Your Honor?

01:25:44 THE COURT: Yeah. Why is it relevant? Are you trying to establish it was in fact a declaration against penal interest?

01:25:51 MS. PEEBLES: Judge, well, I think there is a combination of things going on here, but first and foremost, there was -- obviously she was exposed to potential punishment if she in fact executed a false statement, and that would be an issue or something that

01:26:04 would be used during the course of the interview of
01:26:08 Jennifer in August of 2014 because she signs another
01:26:11 statement which I'm getting to in a minute.

01:26:13 THE COURT: You mean in a threatening manner
01:26:16 or just as a fact?

01:26:17 MS. PEEBLES: Just as a factual matter.

01:26:19 THE COURT: I'll allow it.

01:26:21 **A.** You're going to have to refresh my memory on what
01:26:24 she actually wrote with Investigator Pietroski. I'd have
01:26:28 to read that statement again.

01:26:29 **Q.** Did she voice any concern about having executed a
01:26:32 false statement that you recall?

01:26:34 **A.** In Investigator Pietroski's interview with her?

01:26:37 **Q.** Yes.

01:26:38 **A.** I'd have to refresh my memory on that. I listened
01:26:41 to the video prior to the interview but I -- I forgot what
01:26:44 she said.

01:26:45 **Q.** Well, I guess my question is -- I'm referring to
01:26:49 your interview with her in August.

01:26:51 **A.** Um hum.

01:26:52 **Q.** Is that what your understanding is as well?

01:26:54 **A.** I thought you were referring to Investigator
01:26:57 Pietroski's interview.

01:26:58 **Q.** I'm actually referring to her inter -- your
01:27:01 interview with her in August of 2014 and whether she had a

01:27:04 concern about previously executing a false statement when
01:27:06 she was interviewed by Pietroski.

01:27:08 MR. OAKES: Objection, Your Honor, as to
01:27:11 hearsay. Either he'd have to speculate as to whether
01:27:13 she did have concern, and if she did articulate a
01:27:17 concern, it's hearsay.

01:27:18 MS. PEEBLES: I'm not offering it for the
01:27:20 truth of the matter.

01:27:20 THE COURT: I'll allow it. I have it before
01:27:24 me. I'm not sure I need additional testimony.

01:27:28 MS. PEEBLES: All right.

01:27:28 THE WITNESS: And if she did, it's in the
01:27:29 video. I can't remember that part.

01:27:35 **Q.** During the course of the interview you had with her,
01:27:40 did you question her about an individual named Chris
01:27:43 Combes?

01:27:43 **A.** Yes.

01:27:44 **Q.** And did you ask her whether she knew Chris Combes?

01:27:48 **A.** Yes.

01:27:48 **Q.** Do you know why you were asking her questions about
01:27:51 Chris Combes?

01:27:52 **A.** A lead came in where he was providing some
01:27:54 information, and I just wanted to put that name out to see
01:27:57 if she knew who Chris Combes was in relation to Roger
01:28:01 Breckenridge.

01:28:02 **Q.** And did you yourself ever interview Chris Combes?
01:28:07 **A.** No.
01:28:07 **Q.** Now during the course of your interview with
01:28:23 Jennifer Wescott, you told her that you felt there was some
01:28:28 substance to her phone conversation with Jennifer Wescott.
01:28:32 Do you remember saying that?
01:28:32 **A.** Yes.
01:28:33 **Q.** And you also said that there seemed to be a common
01:28:37 thread between the names Bohrer, Steen and Breckenridge.
01:28:42 Do you recall saying that?
01:28:43 **A.** Yes.
01:28:44 **Q.** And there were several occasions during the course
01:28:56 of the interview where you said you just couldn't get over
01:28:59 the phone call. Do you remember saying that?
01:29:01 **A.** Yes.
01:29:02 **Q.** And at one point you said, "It sounded like you were
01:29:16 confiding in a friend and what you were talking about was
01:29:19 really troubling you." Do you remember saying that?
01:29:21 MR. OAKES: Objection, Your Honor. I guess
01:29:23 what's the relevance of what the investigator said to
01:29:25 Ms. Wescott or what the investigator's thoughts were?
01:29:31 MS. PEEBLES: Well, I think it's relevant,
01:29:33 Judge.
01:29:33 THE COURT: I know you think it's relevant,
01:29:35 but why do you think it's relevant?

01:29:38 MS. PEEBLES: I think simply because he was
01:29:39 conducting the interview is how he was attempting to
01:29:42 elicit information from Ms. Wescott and trying to get
01:29:44 her to be honest because he was part of the phone call.

01:29:48 THE COURT: I'll allow it. It's before me
01:29:50 already isn't it?

01:29:52 MS. PEEBLES: I'm sorry, I missed that.

01:29:54 THE COURT: I already have it before me,
01:29:55 right?

01:29:56 MS. PEEBLES: Yes.

01:29:56 THE COURT: I'll allow it.

01:29:58 **Q.** You can answer.

01:29:59 **A.** Could you ask the question?

01:30:00 (Whereupon, the court reporter read back the
01:30:22 last question).

01:30:23 **Q.** You can answer.

01:30:24 **A.** Yes, I do remember.

01:30:25 **Q.** When you're investigating the authenticity of a
01:30:36 writing as an investigator, not specific to this particular
01:30:39 case, but in general, do you oftentimes look at the
01:30:43 language that is used by an individual in another context
01:30:47 to compare it to whatever writing it is you're looking to
01:30:49 authenticate?

01:30:51 **A.** I can't remember a case where I have ever done that.
01:30:56 I suppose you could if you knew the person, the way they

01:30:58 wrote, the style they wrote.

01:31:02 **Q.** And did you ask Ms. Wescott to execute a statement in her own words after your interview with her in August of 2014?

01:31:11 **A.** Yes.

01:31:12 **Q.** And did she in fact do that?

01:31:13 **A.** Yes, she did.

01:31:14 **Q.** And was there an arrangement to have her subjected to a polygraph examination after that interview?

01:31:20 MR. OAKES: Objection. Relevance, Your Honor.

01:31:22 THE COURT: Yeah. We all know polygraphs aren't relevant.

01:31:25 MS. PEEBLES: I'm not asking him about the results, I'm just asking him about the followup and what their intentions were after the interview.

01:31:31 THE COURT: Okay, as long as we don't get into the results of polygraph.

01:31:34 MS. PEEBLES: I'm not going to get into the results of the polygraph, Judge.

01:31:37 **A.** I wasn't involved with the setup.

01:31:39 **Q.** Did you know they were scheduling a polygraph examination?

01:31:42 **A.** I knew of the possibility, but I didn't know it was an actual agreement to do it.

01:31:48 **Q.** And did you have any involvement in this case with

01:31:53 Jennifer Wescott after your interview with her on August of
01:31:57 2014?

01:31:57 **A.** No.

01:32:07 MS. PEEBLES: Nothing further, thank you.

01:32:08 THE COURT: Thank you. Mr. Oakes or Mr.
01:32:10 Moody, just give me a second please.

01:32:12 (Whereupon, there was a pause in the
01:32:26 proceeding.)

01:32:26 THE COURT: Okay.

01:32:27 MR. OAKES: Actually, Your Honor, I have no
01:32:39 questions.

01:32:39 THE COURT: Okay. Investigator, you can step
01:32:42 down.

01:32:42 THE WITNESS: Thank you.

01:32:42 THE COURT: Thank you. Unfortunately that
01:32:56 brings us to an end today because I see Ms. Wescott's
01:32:59 not available.

01:33:00 MS. PEEBLES: Unfortunately.

01:33:01 THE COURT: Mr. Mensch is probably going to be
01:33:03 brought here tomorrow by a sheriff.

01:33:07 MS. PEEBLES: I think so.

01:33:08 THE COURT: Unfortunately, people in the
gallery, sometimes this happens. Again, we're sorry
01:33:11 for the delay, but Ms. Peebles isn't trying to delay
01:33:13 it, nor the People nor the Court, it just happens in

01:33:17 court sometimes. So we're adjourned until nine o'clock
01:33:19 tomorrow morning. Ms. Peebles, you might want to send
01:33:22 maybe an investigator out to see if he's going to show
01:33:24 up voluntarily or not. Mr. Oakes can be contacted to
01:33:29 have him invited here by an officer in a uniform.

01:33:36 MR. OAKES: Certainly, Your Honor. Judge, can
01:33:38 we approach?

01:33:44 (Whereupon, there was an off the record
01:33:45 discussion at the bench).

01:36:48 THE COURT: Court's in recess until tomorrow
01:36:50 morning at nine.

(Conclusion of Proceeding).

* * *

CERTIFICATE

I, JENNIFER ADYDAN, an Official Court Reporter in and for the State of New York, Fifth Judicial District, do hereby certify that the foregoing is a true, complete and accurate transcript of my stenographic notes taken in the above-entitled matter and the whole thereof to the best of my ability.

Jennifer Adydan

Jennifer Adydan
Official Court Reporter

DATED: February 22, 2015

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF OSWEGO: CRIMINAL TERM:

---------------------------------------x

THE PEOPLE OF THE STATE OF NEW YORK

Indict. No.
94C-0161

- against-

HEARING
VOLUME 9

GARY THIBODEAU,

Defendant.

---------------------------------------x

Oswego County Courthouse
25 E. Oneida Street
Oswego, NY 13126

DATE: March 24, 2015

Before:

HONORABLE DANIEL R. KING
Acting County Court Judge

Appearances:

GREGORY S. OAKES, ESQ.
District Attorney, Oswego County
MARK M. MOODY, ESQ.
Chief Assistant District Attorney

OFFICE OF THE FEDERAL PUBLIC DEFENDER
BY: LISA PEEBLES, ESQ., Public Defender
RANDI JUDA BIANCO, ESQ., Assistant Public Defender
Attorneys for Defendant

Defendant is not present

08:38:22

INDEX TO WITNESSES

	Direct	Cross	Redirect	Recross
FOR THE PEOPLE:				
Terry Whipple	1471	1510	1550	1564
Dr. Laura Knight	1575	1586	1593	1594
William Walsh	1597	1624	--	--
Donald Dodd	1631	--	--	--
FOR THE DEFENDANT:				
Earl Russell	1454	1459	--	--
Brittany Johnson	1463	1467	1469	--

INDEX TO EXHIBITS

	Identification	Evidence
FOR THE PEOPLE:		
III. 12/14/94 file memo	1471	--
JJJ. 5/17/95 letter	1471	--
KKK. Memo to Whipple	1471	1493
LLL. Evidence log	1471	--
MMM. 12/15/94 file memo	1484	1486
NNN. Report	1551	1554
OOO. 4/28/94 Chief's report	1554	1557
PPP. Case management system	1596	--
FOR THE DEFENDANT:		
140. Lead sheet 416	--	1549
156. Whipple internal memo	--	1571

09:04:56 THE COURT: We're back on the motion under
09:04:58 Indictment 94-161. We originally talked two weeks ago
09:05:04 that we may need to continue the week of April
09:05:08 thirteenth. There seems to be a courtroom shortage so
09:05:12 I think I'm going to move it to the week of April the
09:05:14 seventh, okay, probably will be Tuesday through Friday,
09:05:19 not Monday, I have trial in Lewis County on that
09:05:22 Monday, but I'll confirm that later on today with Judge
09:05:25 Seiter's chamber and Judge McCarthy's chambers, so I
09:05:29 will move my cases from Lewis County that week, the
09:05:31 thirteenth, and if I have to, we'll come back here the
09:05:34 week starting the seventh, actually the week of the
09:05:37 sixth, okay, so you don't have to cancel something.

09:05:40 MS. PEEBLES: Thank you.

09:05:41 THE COURT: Also Thursday, people -- the
09:05:43 attorneys please approach regarding Thursday.

09:06:43 (Whereupon, there was an off the record
09:06:45 discussion at the bench).

09:08:16 THE COURT: Okay, first we're here on the
09:08:24 motion regarding Mr. Thibodeau's presence or
09:08:27 non-presence. Ms. Peebles, do you wish to be heard?

09:08:31 MS. PEEBLES: I don't wish to be heard any
09:08:32 further, Your Honor.

09:08:33 THE COURT: Mr. Oakes?

09:08:33 MR. OAKES: The People don't wish to be heard

09:08:35 any further, Your Honor. My understanding is the defendant's provided an affidavit sworn to so I think it's --

09:08:42 THE COURT: Do you oppose the request?

09:08:44 MR. OAKES: No.

09:08:44 THE COURT: For the record, Mr. Thibodeau has supplied an affidavit indicating that he does not believe he's of good enough health to attend today's proceeding and any future proceeding had in this case, so the Court is going to grant the motion that Mr. Thibodeau's appearance be waived. No objection, Ms. Peebles?

09:09:01 MS. PEEBLES: No, Your Honor, thank you.

09:09:02 THE COURT: No objection, Mr. Oakes?

09:09:03 MR. OAKES: No, Your Honor, thank you.

09:09:04 THE COURT: Ms. Peebles, you also have a motion regarding bringing or recalling Mr. Bohrer and you also want to call another witness who is an alleged victim of a crime committed by Mr. Bohrer, is that correct?

09:09:16 MS. PEEBLES: Yes, Judge, and I can't tell the Court for certain that there won't be several more witnesses that we would call in connection with some of the issues that we're starting to uncover with regard to Mr. Bohrer.

09:09:27 THE COURT: Okay, well, I have no opposition papers from the People at this point. This letter was only received by the Court on March the nine -- actually March twentieth, Friday. Have you had a chance to respond?

09:09:39 MR. OAKES: We -- we've had a chance to review, Your Honor. My understanding is Ms. Peebles flew the victim from that offense in 1981 in Milwaukee here to this jurisdiction, and I understand the reason why the defense wants to introduce that evidence, Your Honor, but to me it really seems to go to propensity, doesn't go to a lawful purpose of it being admissible at trial.

09:10:05 I talked to Ms. Bianco yesterday about it and we were talking about potential Molineux exceptions, and this really going down the list, one of the common exceptions is intent or absence of mistake. Clearly whoever abducted Ms. Allen did it intentionally. I don't think there's any evidence that a person mistakenly kidnapped her.

09:10:27 One of the exemptions is common scheme or plan. There has been no suggestion that the abduction and kidnapping of Heidi Allen factually relates to a common scheme to the 1981 offense in Milwaukee, that the two cases are somehow factually related or that

09:10:46 they're related in purpose.

09:10:48 The other notable exemption is typically a modus operandi to establish identity. Based upon the affidavit, the felony complaint that was submitted from the victim, it doesn't appear that that crime is factually similar to this present offense that we're -- that's the subject of this hearing. Yes, in both cases a young woman was abducted or attempted to be abducted, but that's really where the similarities end. If the Milwaukee case was a cashier at a convenience store who was abducted in the morning in which she was alone, that would be factually similar to this case. If there was a unique method by which Mr. Bohrer committed that 1981 offense, and I guess the example I would use is the classic of if he wore a particular type of clown costume or mask so that we have evidence that the person who kidnapped Heidi Allen wore that same type of mask, a set so unique that it would have to be the same person.

09:11:49 Again, those facts are not present, yet I don't believe it falls under the Molineux exceptions that would be admissible. It really seems to go to propensity and would be offered to show a jury that look, this man committed an offense thirteen years before, he must have committed this offense. The other

09:12:07 concern, Your Honor, is you know at this point we call
09:12:11 in the victim from the 1981 case, is it really drives
09:12:14 this hearing in a different direction other than the
09:12:16 focus of what this hearing is which is the new evidence
09:12:19 that would tend to show, allegedly show Mr. Thibodeau's
09:12:22 innocence. If the defense wanted to offer the felony
09:12:27 complaint, the statement of the victim and the
09:12:30 statement, the affidavit of John Bohrer who was the
09:12:34 brother of Michael Bohrer, the alleged codefendant,
09:12:37 wanted to offer those simply for the purpose of this
09:12:40 hearing subject to the same objection we had with the
09:12:42 other testimony so that --

09:12:43 THE COURT: The hearsay issue.

09:12:44 MR. OAKES: The hearsay issue, so this way
09:12:47 this court could look at that as a proffer of what that
09:12:50 victim would potentially say to see what the facts in
09:12:53 that case fall under Molineux exception and the Court
09:12:57 essentially use this -- those affidavits at evidentiary
09:13:00 hearing to determine whether that would be admissible
09:13:02 at trial, but I don't see the value of calling that
09:13:04 young lady to testify and to repeat the facts that are
09:13:09 essentially asserted in that felony complaint.

09:13:14 THE COURT: Ms. Peebles?

09:13:14 MS. PEEBLES: Yes, Judge. I disagree entirely
09:13:17 with Mr. Oakes' position in connection with whether or

09:13:21 not this would be admissible in a trial. As a matter 09:13:24 of fact, I think it's pretty clear black letter law 09:13:28 that this type of testimony would in fact be admissible 09:13:30 to show a modus operandi and exactly the manner in 09:13:35 which the common scheme or plan.

09:13:38 The complaint that Mr. Oakes has read does not 09:13:43 do justice to the attack on Kathryn Schmidt by Mr. 09:13:48 Bohrer. Now they've went to great lengths to suggest 09:13:51 that Mr. Bohrer is some kind of crazy lunatic who 09:13:56 simply has some bizarre interest in the Heidi Allen 09:14:00 case where he carries around all of this information, 09:14:02 does an investigation on his own, injects himself into 09:14:06 the investigation and somehow he has nothing to do with 09:14:10 this case and wasn't responsible at all when in fact he 09:14:14 was breaking down on the stand and he was actually 09:14:18 combative in connection with some of the questions I 09:14:20 was asking him, and Judge, if -- if Catherine Schmitt 09:14:26 is permitted to testify, she will in fact establish a 09:14:29 common scheme or plan. Yes, she was not employed at a 09:14:34 D & W Convenience Store. She was a female between the 09:14:36 ages of eighteen and twenty-one. She had similar 09:14:39 appearance as Heidi Allen. He stalked her, followed 09:14:43 her with his lights off from her place of employment, 09:14:48 locked her into her spot in her apartment complex, he 09:14:52 physically approached her and suggested that he, excuse

09:14:56 me, under a ruse that he needed some assistance. He 09:15:00 grabs her from behind, puts his hand over her mouth. 09:15:03 John Bohrer gets out of the car, gets to the driver's 09:15:07 side, opens the passenger door. But for the fact that 09:15:10 they were in a Mustang which she was able to grab on to 09:15:14 the roof of the car, she was in that car, he was 09:15:16 punching her in the face, she was full of blood, her 09:15:18 skirt was ripped, she was lucky to escape with her 09:15:22 life, and the only reason she did escape is because the 09:15:25 vehicle wasn't big. Had that vehicle been a van, she 09:15:30 wouldn't have made it out of there, she would have been 09:15:32 another Heidi Allen.

09:15:33 She describes the person who attacked her as 09:15:36 somebody who had shaggy facial hair, shaggy hair and 09:15:40 shaggy facial hair. She wasn't sure she could actually 09:15:43 identify him because of all the facial hair and the 09:15:46 shaggy hair that he had versus the brother John Bohrer. 09:15:50 Fortunately, the car was distinctive enough where she 09:15:54 was able to in fact notify the police right away.

09:15:57 This woman comes here today to explain what 09:16:01 happened to her at the hands of Michael Bohrer, and if 09:16:03 the Court would remember, I asked Mr. Bohrer whether he 09:16:06 had a tendency toward violence against women and he 09:16:10 said I have never hit a woman. That is absolutely not 09:16:14 true. And we know that because Mr. Bohrer pled guilty

09:16:18 in Milwaukee to an offense, and the victim is Catherine Schmitt, and in spite their position, it is classic Molineux evidence that would be admissible in a court in front of a jury, and the rules for a defendant to mount a defense is more relaxed when the defense is actually trying to put forth a case for third party culpability, and I suggest to the Court that it would in fact be admissible. We actually have a case, People versus De Meo, which is a Supreme Court Appellate Division case, Second Department.

09:16:51 THE COURT: Is that one not cited in your -- your documents?

09:16:53 MS. PEEBLES: It's not one cited in our documents, and it involves the actual pattern of an individual who was convicted of kidnapping.

09:17:00 THE COURT: What's the citation?

09:17:02 MS. PEEBLES: The citation is 139 AD2d 758, 527 NY Supp.2d 507.

09:17:15 THE COURT: Okay, go ahead.

09:17:16 MS. PEEBLES: And Judge, I believe based on that, the fact that there's a relaxed standard particularly for a defendant who is trying to mount a defense, and it would be under his constitutional right to actually be able to elicit this testimony, and Judge, it actually fits with what Mr. Pierce described

09:17:37 what he witnessed when he drove by the D & W, the manner in which Heidi Allen was kidnapped, and from what he saw, it's eerily similar.

09:17:46 The other thing that Catherine Schmitt will testify to is that it wasn't until he picked her up off the ground where he took his hand from away from her mouth where she was able to scream and lights went on and the other brother was actually pulling her into the vehicle. Now John Bohrer obviously minimized what he did in the case in his affidavit which is irrelevant as far as I'm concerned right now, Your Honor, and the bottom line is a Mustang has two doors, so John Bohrer's suggestion that he sat in the passenger side and somehow the door opened and he was just sitting there doesn't ring true regardless, so I'm not in a position to want to offer the affidavit or the criminal complaint without the testimony of Catherine Schmitt. I think that paints the entire picture, it allows the Court to see how there is -- was a common scheme or plan, and it was -- there was a modus operandi here, and Judge, it's our position that we have reason to believe that Catherine Schmitt was not his only victim, and we're actually continuing to look into some things and contact individuals but we don't have that and that's why I still leave open the possibility that we

09:19:03 would offer -- we -- there's potential that we could
09:19:06 possibly offer additional witnesses but I -- I don't
09:19:10 have that to suggest right now.

09:19:14 THE COURT: Mr. Oakes? You were about to say
09:19:16 something?

09:19:17 MR. OAKES: If I could, Your Honor, and I
09:19:19 guess I'm struck by the speculative argument in her
09:19:23 assertion that potentially Mr. Bohrer has other
09:19:27 victims. Clearly that goes to the heart of why it's
09:19:29 being offered which is propensity to show this man
09:19:32 committed these types of offenses, and when we talk
09:19:34 about, you know, modus operandi, again, the facts of
09:19:37 these two cases are dissimilar, they're separated by
09:19:40 time and geographic location, but then counsel talks
09:19:44 about the description of Mr. Bohrer in 1981 having a
09:19:48 shaggy beard and shaggy hair. There's no evidence
09:19:51 before this court during this hearing that that fits
09:19:53 Mr. Bohrer's appearance in 1994, and to accept
09:19:58 counsel's argument is to accept the idea that Mr.
09:20:01 Bohrer was the man driving the van who was seen by Mr.
09:20:05 Pierce when Mr. Pierce's testimony that they offered
09:20:08 was that it was in fact James Thumper Steen. Of course
09:20:12 he previously identified that person as Gary Thibodeau,
09:20:15 but again, there's been no testimony that Michael
09:20:19 Bohrer was in the van or seen and in fact that evidence

09:20:21 is contradicted by their own witness.

09:20:24 MS. PEEBLES: Judge, I'd like to be heard on
09:20:26 that.

09:20:26 THE COURT: Absolutely, sure.

09:20:26 MS. PEEBLES: First of all, Mr. Pierce never
09:20:27 identified Gary Thibodeau. He assumed that they had
09:20:31 the right individual which is when he went down --

09:20:34 THE COURT: No, he went to the DA's Office and
09:20:36 positively identified him.

09:20:37 MS. PEEBLES: Did not ever identify him in a
09:20:39 photo lineup, absolutely did not happen, and in fact
09:20:42 they went to great pains and they had both the photo
09:20:45 lineups, he could pick out either one of them. What he
09:20:48 remembered was a shaggy beard and shaggy hair, and also
09:20:51 the critical point of Mr. Pierce's testimony was the
09:20:54 manner in which he saw the kidnapping take place.

09:20:56 THE COURT: But did Mr. Pierce on the stand
09:20:58 positively identify Mr. Steen?

09:21:01 MS. PEEBLES: He -- what he positively
09:21:02 identified is the fact that it was not Mr. Thibodeau's
09:21:05 van. He identified a white van that did not -- was not
09:21:10 Richard Thibodeau's van. Secondly, what he said was he
09:21:14 saw a guy with a shaggy beard and long hair. He didn't
09:21:19 identify him from a photo lineup, nor did he identify
09:21:23 Gary Thibodeau in a photo lineup.

09:21:25 THE COURT: He identified Steen from a picture
09:21:27 in the paper did he not?

09:21:28 MS. PEEBLES: He looked at the paper and said
09:21:29 that was who he thought was the person who did it.

09:21:32 THE COURT: That's true, he was very positive.

09:21:34 MS. PEEBLES: Right, and there were two
09:21:35 people, we're talking about two people. We're not
09:21:36 talking about one person, we're talking about two
09:21:39 people. And by the way, he couldn't see or make a good
09:21:43 identification on the passenger according to Mr.
09:21:47 Pierce's testimony, so the idea that it's somehow
09:21:49 inconsistent with what Mr. Pierce said is not the case
09:21:53 at all, Judge. If nothing else, it basically
09:21:56 corroborates the fact that this was the way in which he
09:22:01 abducted women to get them from behind which is exactly
09:22:03 what he did in the case of Catherine Schmitt.

09:22:05 THE COURT: As I indicated at the bench, I'm
09:22:07 going to reserve my decision on this case because I got
09:22:09 it Friday afternoon on this motion, excuse me. I know
09:22:12 you have the witness here, I'm -- I'm not going to let
09:22:16 her testify until I make a decision on the motion, I'm
09:22:18 not going to. I believe it would be too -- it's just
09:22:21 not appropriate at this time. The fact that the motion
09:22:25 was made on Friday the twentieth does not give the
09:22:28 Court time to respond in an appropriate manner, nor did

09:22:31 it give it time for the People to respond in writing,
09:22:35 and the fact that she was flown in from Milwaukee, I
09:22:37 apologize for that, but I'm not going to allow her to
09:22:40 testify until I make a decision.

09:22:41 MS. PEEBLES: I need to be heard on something
09:22:43 really briefly, Judge.

09:22:43 THE COURT: Sure.

09:22:44 MS. PEEBLES: First of all, I have a real
09:22:46 issue with the prosecution and their inability to be
09:22:51 prepared for this particular witness to testify because
09:22:54 I asked in November what investigation their office and
09:22:58 the Oswego County Sheriff's Department did to research
09:23:02 Mr. Bohrer, and I asked specifically what do you know
09:23:06 about his daughters, what about him? Absolutely
09:23:09 nothing. I was told if I wanted to do an investigation
09:23:12 I could do it on my own dime. Well, I did, and we have
09:23:15 the witness here today, and he was notified of this
09:23:18 last week, and I find it hard to believe that Your
09:23:23 Honor, I'm the one who is able to find this information
09:23:26 and this victim and somehow they weren't able to find
09:23:30 it, and secondly, there's -- there's a lot more to
09:23:34 this, Judge, and it's not pure speculation despite what
09:23:37 the prosecutor thinks that I'm trying to speculate
09:23:40 here, there's a lot more to this than what we have
09:23:42 right now. We've scratched the surface and it's only

09:23:45 going to get worse and I --
09:23:48 THE COURT: All the Court has before it right
09:23:50 now is one, right? Otherwise, it's speculative.
09:23:53 MS. PEEBLES: Well --
09:23:54 THE COURT: I'm not trying to demean the
09:23:55 argument, I'm simply saying you are saying there are
09:23:58 other victims, but I don't have before me other victims
09:24:01 at his point, correct?
09:24:02 MS. PEEBLES: Well, and I -- I also, Judge,
09:24:05 while I was trying to question Mr. Bohrer on the stand
09:24:07 about his history of violence and his background, they
09:24:10 objected, and I wasn't able to get into that, and we
09:24:13 probably wouldn't be in this situation because perhaps
09:24:16 he would have told us about that and we would know.
09:24:18 THE COURT: The fact of the matter is I have
09:24:19 not made the decision on the motion, I will make a
09:24:21 decision on the motion, but I'm not going to have this
09:24:23 person testify prior to the decision, okay?
09:24:27 MS. BIANCO: Judge --
09:24:28 THE COURT: Hold on. And I don't mean this in
09:24:29 a negative sense, but I think it was somewhat
09:24:32 presume -- very I guess inappropriate to bring a
09:24:36 witness here prior to the decision being made by the
09:24:38 Court regarding whether or not the Court was going to
09:24:40 allow her to testify. Now if the Court does allow her

09:24:43 to testify that's fine, but I'm not going to be forced into letting a witness testify because you chose to fly her here Monday before I made a decision on the motion.

09:24:51 MS. PEEBLES: Well, I actually resent that by the Court.

09:24:55 THE COURT: Oh, don't resent it, it's just I'm not going to be forced to have a witness testify before I've made a decision on a very important motion.

09:25:03 MS. PEEBLES: Listen. I am not here presuming anything.

09:25:05 THE COURT: And --

09:25:06 MS. PEEBLES: Everything under the -- I -- I could have predicted that they were going to block her attempt to testify so it's not shocking to me that this is happening.

09:25:15 THE COURT: But their decision to try to block it is not the issue. I haven't made a decision, that's the issue.

09:25:20 MS. PEEBLES: But there was no -- there was no presuming here. I didn't presume.

09:25:24 THE COURT: I backed off from the word "presumption," okay, I think it was a mistake in scheduling a witness before the Court has made a decision on a motion whether or not that witness can testify. To be honest with you, the DA's attempt to

09:25:36 block it, of course you can foresee that's going to happen, but they don't make the ultimate decision, I do, as to whether or not she's going to be able to testify. She's not going to testify until I've made a decision on your motion and that's it.

09:25:45 MS. PEEBLES: Well, I'd like to know when I -- when I can anticipate perhaps getting a decision so I can make --

09:25:50 THE COURT: I'm hoping by Wednesday or Thursday, depending how things go today.

09:25:54 MS. BIANCO: Economically, there's no jury here. You can always strike her testimony. She's here, she's scheduled to fly out, we can have her testimony --

09:26:03 THE COURT: At this point the Court's not going to allow her to testify, okay? We can -- you can ask me again tomorrow until I make a decision on the motion. Had you -- had you requested that, it would have been different, okay, but that wasn't -- you presented a motion. There was no indication that the witness was going to be flown here today, okay? I'm not going to let her testify until the motion's decided. Okay.

09:26:26 MS. PEEBLES: So you anticipate by the end of the week we'll have a decision.

09:26:28 THE COURT: Actually I'm hoping by Wednesday
09:26:30 or Thursday to be honest with you, but before the end
09:26:34 of the week. We'll have a better idea depending how
09:26:35 things go today. If we're here till four, four-thirty
09:26:38 today, four, four-thirty on Wednesday, it's going to be
09:26:40 a little bit more difficult, but we'll try to get this
09:26:42 done as soon as we can because I understand it's time
09:26:46 sensitive, I'm not -- I'm not naive to that fact, but
09:26:49 there was nothing in the paperwork presented to the
09:26:50 Court on the twentieth of March which was last Friday
09:26:53 that you were going to bring her here to testify today.
09:26:57 It's a done issue. She --

09:26:59 MS. PEEBLES: That's fine. I'll bring her
09:27:01 whenever. If the Court -- I don't have an issue with
09:27:04 it. If you tell me I can bring her Friday, I'll fly
09:27:06 her back on Friday. I have no problem with that,
09:27:08 Judge.

09:27:09 THE COURT: I'm going to -- we talked about --
09:27:10 my -- my clerk and I talked about this on the way down,
09:27:13 we want an answer, we're going to try to get an answer
09:27:16 on this motion sooner than later because we realize
09:27:21 it's time sensitive, okay, so let's move forward today.
09:27:22 Go ahead, Ms. Bianco.

09:27:23 MS. BIANCO: Just one other thing, Judge.

09:27:25 THE COURT: Sure.

09:27:26 MS. BIANCO: If they were willing to enter the complaint, that would imply that they would agree that it's Molineux at least in theory.

09:27:34 COURT: Ultimately it's my decision. Whether Mr. Oakes agrees to it or not I can still say no.

09:27:39 MS. BIANCO: I understand that, Judge.

09:27:40 THE COURT: So whether or not Mr. Oakes is going to consent to the introduction of the complaint is irrelevant to what my analysis of whether it's Molineux or not. It's my decision. Nothing against Mr. Oakes, nothing against the two of you, you have your arguments, they're very well made, but whether -- whether Mr. Oakes says "I don't care if she testifies or not" doesn't dictate the Court's decision, so he could stand up right now, say "I don't care if she testifies." I'm not going to let her testify. I have not decided the motion yet, okay? And I know you take exception to that and mark the exception on the record. Let's move forward, guys.

09:28:13 MS. PEEBLES: All right.

09:28:14 THE COURT: Okay.

09:28:14 MS. PEEBLES: We still have a witness to call, Judge, who is here today.

09:28:17 THE COURT: Okay, who is that?

09:28:19 MS. PEEBLES: Earl Russell. And there's one

09:28:21 other issue logistically. We have one other woman,
09:28:25 Brittany Johnson.
09:28:26 THE COURT: Jennifer Johnson?
09:28:28 MS. PEEBLES: Brittany. I keep saying
09:28:30 Jennifer.
09:28:30 THE COURT: Your papers say Jennifer. It's
09:28:33 Brittany?
09:28:34 MS. PEEBLES: Yes, it's Brittany, and Judge, I
09:28:37 think it will be probably 10:30 by the time we can get
09:28:41 her here so if the prosecution --
09:28:43 THE COURT: Is Mr. Russell here right now?
09:28:46 MS. PEEBLES: Pardon me?
09:28:46 THE COURT: Is Mr. Russell here?
09:28:48 MS. PEEBLES: He's here, yes, so I'm prepared
09:28:50 to go forward with him.
09:28:50 THE COURT: Any objection, Mr. Oakes?
09:28:52 MR. OAKES: No objection, Your Honor, and Your
09:28:54 Honor, because I realize the Court was going to make a
09:28:57 decision regarding the witness testifying this morning,
09:28:59 I talked to one of my witnesses, indicated that I would
09:29:02 call him this morning after the Court made a ruling to
09:29:05 let him know what time he needed to be here. If the
09:29:07 Court permitted the other witnesses, obviously we
09:29:10 wouldn't get to him till later in the afternoon.
09:29:12 THE COURT: Brittany Johnson, if she starts at

09:29:15 10:30, will she be done by 11:30?
09:29:16 MS. PEEBLES: She'll be a quick witness,
09:29:17 Judge.
09:29:18 THE COURT: Why don't you have your witness
09:29:19 lined up at eleven.
09:29:20 MR. OAKES: Okay.
09:29:21 THE COURT: We allowed -- yeah. Is Mr.
09:29:23 Russell here?
09:29:24 MS. PEEBLES: Yes.
09:29:31 THE COURT: So we're clear, the letter says
09:29:33 Jennifer Johnson. It's Brittany Johnson.
09:29:36 MS. PEEBLES: It's Brittany. I told the
09:29:38 prosecutor it's Brittany, not Jennifer.
09:29:42 THE COURT: Okay, call Earl Russell.
09:30:11 MS. BIANCO: Judge, before Mr. Russell comes
09:30:12 out, we did subpoena Michael Bohrer for tomorrow. I
09:30:15 guess that would be dependent on the Court's decision
09:30:17 as well.
09:30:17 THE COURT: Have you found Mr. Bohrer?
09:30:20 MS. PEEBLES: No.
09:30:20 THE COURT: You haven't served the subpoena on
09:30:22 him.
09:30:23 MS. BIANCO: We served the subpoena on his
09:30:24 counsel last night. I called --
09:30:26 THE COURT: That's not effective service now.

09:30:27 MS. BIANCO: He didn't take my call but his secretary said I could fax it.
09:30:30

09:30:33 THE COURT: We'll deal with it when we deal with it, but service of a subpoena on a defense attorney doesn't qualify as a subpoena on the witness.
09:30:34
09:30:41

09:30:43 MS. BIANCO: I understand that. I asked specifically whether he would talk with me, whether he wanted us to go out and serve him in person or whether or not he would prefer to take the subpoena. His secretary said he was unavailable to take my call. I said can I send a subpoena to him directly now because this is what we're interested in, if he has any questions to call me. I didn't receive a call, we sent the subpoena.
09:30:45
09:30:48
09:30:50
09:30:52
09:30:55
09:30:58
09:31:00
09:31:02

09:31:03 THE COURT: Okay, he's certainly under no obligation to accept the service of the subpoena, and even if he said fax the subpoena to my office, it does not equate to Mr. Bohrer being subpoenaed. You agree to that?
09:31:05
09:31:07
09:31:11
09:31:14

09:31:14 MS. BIANCO: Then we'll serve him in person without his lawyer.
09:31:16

09:31:18 THE COURT: That's what has to be done.

09:31:20 THE CLERK: Raise your right hand, put your left on the Bible.
09:31:22

09:31:23 EARL RUSSELL, Called as a witness, having been

09:31:25 duly sworn, was examined and testified as follows:

09:31:25 THE CLERK: Please state your name for the
09:31:31 record.

09:31:31 THE WITNESS: Earl Russell.

09:31:33 THE CLERK: Spell your last name.

09:31:34 THE WITNESS: R-U-S-S-E-L-L.

09:31:37 THE CLERK: Have a seat please.

09:31:40 THE COURT: Mr. Russell, before Ms. Peebles
09:31:42 asks you any questions, I need to ask you whether or
09:31:44 not you consent to having your testimony both audio and
09:31:46 videotaped.

09:31:47 THE WITNESS: No, I do not.

09:31:48 THE COURT: Thank you.

09:31:51 THE WITNESS: And Your Honor, I also request
09:31:53 that my name be kept out of the press as well.

09:31:55 THE COURT: We can make that request. I'm not
09:31:57 sure if I'm allowed to order that.

09:31:58 THE WITNESS: Okay.

09:31:59 THE COURT: I will request that the good folks
09:32:02 in the media would respect the witness's request
09:32:04 knowing full well I can't bind you to that, but maybe
09:32:08 there's a moral obligation or an ethical obligation to
09:32:11 honor what the witness has requested. Up to you guys.
09:32:14 Your decision.

09:32:16 THE WITNESS: Thank you, Your Honor.

09:32:17 THE COURT: Yes.

DIRECT EXAMINATION

09:32:18 BY MS. PEEBLES:

09:32:18 **Q.** Mr. Russell, how old are you?

09:32:20 **A.** I will be fifty-five in September. I'm fifty-four
09:32:23 at this time.

09:32:23 **Q.** Do you live in Oswego County?

09:32:25 **A.** Yes, ma'am.

09:32:26 **Q.** And how long have you lived in Oswego County?

09:32:28 **A.** Forty-five years.

09:32:30 **Q.** Are you married?

09:32:32 **A.** Yes, ma'am.

09:32:33 **Q.** Do you have children?

09:32:33 **A.** Yes, ma'am.

09:32:34 **Q.** Were you in the military?

09:32:37 **A.** Yes, ma'am.

09:32:38 **Q.** When?

09:32:38 **A.** I went in in 1979, seventy-nine, and I got out in
09:32:44 eighty-four.

09:32:45 **Q.** And when you returned from the military where did
09:32:47 you live?

09:32:49 **A.** Part the time in Oswego County, the other part in
09:32:51 Onondaga County at my mother's.

09:32:53 **Q.** I want to ask you some questions about where you
09:32:56 were living in 1991 through 1993. Do you recall where you

09:33:01 were living in early 1991 through 1993?

09:33:04 **A.** Yes, ma'am. I was living in Oswego County.

09:33:06 **Q.** And whereabouts?

09:33:07 **A.** S & E Trailer Park.

09:33:14 **Q.** And S & E Trailer Park is located on -- on what
09:33:18 route?

09:33:18 **A.** State Route 11 in the Town of Colosse.

09:33:20 **Q.** Now, do you know an individual by the name of Tom
09:33:24 Martin?

09:33:25 **A.** Yes, I do.

09:33:26 **Q.** How do you know Tom Martin?

09:33:27 **A.** Him and I have been friends for probably twenty
09:33:30 years.

09:33:30 **Q.** And did you ever work for Tom Martin?

09:33:32 **A.** Yes, I did.

09:33:33 **Q.** How long did you work for him?

09:33:34 **A.** A couple of years.

09:33:35 **Q.** Do you remember what year?

09:33:37 **A.** Late eighties to the early nineties, would be
09:33:41 between eighty-eight and ninety-two, somewhere in that time
09:33:45 frame.

09:33:45 **Q.** Now, do you know an individual named Roger
09:33:48 Breckenridge?

09:33:48 **A.** Yes, I do.

09:33:49 **Q.** And how did you know Roger Breckenridge?

09:33:52 **A.** I met him through his brother Rodney when he -- when
09:33:56 he was older after I come home from the service and also
09:33:59 when he worked with Tom Martin.

09:34:02 **Q.** So Roger Breckenridge worked for Tom Martin when you
09:34:05 worked for Tom Martin?

09:34:06 **A.** Yes, ma'am.

09:34:07 **Q.** And do you recall what year that was again?

09:34:08 **A.** Would have to have been well, late eighty-nine to
09:34:16 somewhere around ninety-two or ninety-three.

09:34:18 **Q.** Now, did you know an individual named James Steen?

09:34:21 **A.** Yes, I do.

09:34:21 **Q.** How did you know him?

09:34:23 **A.** He is my wife's cousin.

09:34:25 **Q.** And when did you first meet Mr. Steen?

09:34:29 **A.** Probably shortly after I got out of the service at a
09:34:34 Stevens family reunion.

09:34:35 **Q.** Now, when you were working for Tom Martin, did you
09:34:40 ever see Roger Breckenridge or James Steen in any kind of
09:34:45 social setting?

09:34:46 **A.** Once in a while, yes. I'd see Roger more than I
09:34:49 would Jay.

09:34:50 **Q.** But you saw them together back in the early
09:34:53 nineties?

09:34:53 **A.** Yes, off and on.

09:34:54 **Q.** Now, did you know an individual named Michael

09:34:58 Bohrer?

09:34:58 **A.** I know of him, yes.

09:34:59 **Q.** And was he -- I'm sorry, strike that. When you were 09:35:04 working for Tom Martin, did you see Michael Bohrer?

09:35:07 **A.** I'd see him once in a while, yes, ma'am.

09:35:10 **Q.** Now, Jennifer Wescott, do you know Jennifer Wescott?

09:35:15 **A.** Yes, I do.

09:35:16 **Q.** And when did you first come into contact with 09:35:19 Jennifer Wescott?

09:35:20 **A.** Would have to have been late eighties, early 09:35:26 nineties again, ninety-one, ninety-two, somewhere in there.

09:35:28 **Q.** And when you met Jennifer Wescott, was she with 09:35:33 Roger Breckenridge?

09:35:34 **A.** Um hum.

09:35:34 **Q.** And could you tell the Court what you remember about 09:35:38 Roger Breckenridge and Jennifer Wescott?

09:35:40 **A.** Well, I remember seeing them once in a while 09:35:44 together. We had a party at Tom Martin's once, they were 09:35:50 there, and we thought, I emphasize we thought, Roger was 09:35:57 serving her alcohol because she was under age and he was 09:36:00 asked to take her off the property.

09:36:02 **Q.** And this was --

09:36:04 MR. OAKES: Objection, Your Honor, 09:36:06 speculative.

09:36:07 THE COURT: I'll allow it. Can I have a time

09:36:13 frame?

09:36:13 **Q.** This party would have been before 1993?

09:36:16 **A.** Yes.

09:36:16 **Q.** And how do you know that it was before 1993?

09:36:19 **A.** Because in 1993 my middle daughter was born, my aunt
09:36:24 died and we moved to the Town of Lacona.

09:36:27 **Q.** So you weren't around that Oswego County group after
09:36:30 you moved to Sandy Creek?

09:36:31 **A.** Off and on I was, yeah, I'd come down, my wife and I
09:36:34 would drive down, we'd see her parents and visit them for
09:36:37 once in a while.

09:36:38 **Q.** But as far as hanging out socially you weren't doing
09:36:41 that.

09:36:41 **A.** No.

09:36:42 **Q.** Now, and you recall seeing Roger Breckenridge
09:36:57 hanging out with Jennifer Wescott before you moved to Sandy
09:37:00 Creek in 1993.

09:37:01 **A.** Um hum.

09:37:01 **Q.** You have to say yes for the record.

09:37:04 **A.** Yes, ma'am. I apologize, Your Honor.

09:37:09 THE COURT: That's fine.

09:37:10 **Q.** And you met Michael Bohrer through Tom Martin?

09:37:13 **A.** Yes, ma'am.

09:37:15 MS. PEEBLES: No further questions.

09:37:23 THE COURT: Mr. Oakes?

09:37:25 MR. OAKES: Thank you, Your Honor.
09:37:26 CROSS-EXAMINATION
09:37:27 BY MR. OAKES:
09:37:46 **Q.** Good morning, Mr. Russell.
09:37:51 **A.** Good morning, Mr. Oakes.
09:37:52 **Q.** How are you today?
09:37:53 **A.** A little winded because of the cold weather and my
09:37:56 asthma but other than that fine. How about yourself, sir?
09:37:59 **Q.** Good, thank you. Mr. Russell, you said that in a
09:38:05 period in the early nineties you saw Jennifer Wescott and
09:38:08 Roger Breckenridge both at a party?
09:38:11 **A.** Um hum.
09:38:12 **Q.** Do you know what the nature of their relationship
09:38:14 was at that time?
09:38:15 **A.** I couldn't tell you for sure what the nature of
09:38:18 their relationship was. I'm not absolutely positive what
09:38:22 it was, but I do know that once in a while you would see
09:38:25 Roger, and Jennifer would be with him.
09:38:29 **Q.** But you don't know if they were dating, if they were
09:38:33 boyfriend and girlfriend?
09:38:34 **A.** I -- not absolutely positive on that, no.
09:38:37 **Q.** And around that time period, you said you knew
09:38:43 Roger. Had you ever been to Roger's house?
09:38:45 **A.** Yes.
09:38:46 **Q.** And where -- Roger's house was located on Kenyon

09:38:50 Road at that time, correct?

09:38:51 **A.** Yes, it was, at the very end of it as it -- as it curves around. If you went straight, you would have gone -- you would have smacked right into his trailer.

09:39:01 **Q.** So if you were to turn off from State Route 69 onto Kenyon, you would go down and it's down there a couple miles on the left-hand side?

09:39:08 **A.** Yes. The way the road runs is it runs straight, it's got its curves in it, but then there is a sharp left-hand curve.

09:39:19 **Q.** Right.

09:39:20 **A.** If you miss that left hand curve, you are going to smack right into their trailer. It was right at the end of that, right where it curved. The road went like this, the curve was here, the trailer was right here (indicating).

09:39:33 **Q.** So the road went left?

09:39:34 **A.** Yes.

09:39:35 **Q.** Okay, and Roger lived there with his wife Tracey?

09:39:39 **A.** Yes, sir.

09:39:39 **Q.** And that was in ninety-three and -- well, in ninety-four as well, correct?

09:39:44 **A.** Yes.

09:39:45 **Q.** And at that time in 1994, you still knew Roger at that time?

09:39:50 **A.** I still knew him, yes.

09:39:52 **Q.** And in 1994, after April of ninety-four, had you been to Roger's house?

09:39:58 **A.** I'd been to Roger's house a lot. I couldn't tell you, you know, what month, how many times, but the years, yes.

09:40:09 **Q.** So but mid to late ninety-four Roger was still at that trailer?

09:40:13 **A.** As far as I know, yes.

09:40:14 **Q.** And he was still living with Tracey at that time?

09:40:16 **A.** As far as I know, yes.

09:40:18 **Q.** And he had a number of kids with Tracey, correct?

09:40:21 **A.** Yes, he did. Yes, he did.

09:40:24 **Q.** And you never knew Roger to live on Rice Road did you?

09:40:26 **A.** Pardon?

09:40:27 **Q.** You never knew Roger Breckenridge to live on Rice Road?

09:40:32 **A.** He may have, he might not have. I don't know for sure.

09:40:36 **Q.** Okay.

09:40:56 MR. OAKES: I have no further questions for Mr. Russell, Your Honor.

09:40:59 THE COURT: Ms. Peebles?

09:41:00 MS. PEEBLES: Judge, we have -- our witness is probably close to here. I'm not sure she's here yet.

09:41:05 THE COURT: Wait until she comes?
09:41:07 MS. PEEBLES: Is that a problem?
09:41:08 MR. OAKES: That's fine with me, Your Honor.
09:41:10 THE COURT: Sir, you can step down.
09:41:12 THE WITNESS: Do you need me to remain?
09:41:14 THE COURT: No, you're all set. You're not
09:41:17 planning on recalling Mr. Russell?
09:41:19 MS. PEEBLES: No.
09:41:19 THE COURT: You're all set. Before we go off
09:41:21 the record, I want to continue to thank the media for
09:41:24 the restraint you've shown during this whole proceeding
09:41:28 in honoring the Court's request not to hear dings and
09:41:31 cell phones going off. For everybody in the gallery,
09:41:34 this is a -- continues to be a very emotional
09:41:37 situation. The Court will allow people obviously in,
09:41:40 it's an open court, but if there are any outbursts,
09:41:42 outcries, et cetera, you will be asked to leave and you
09:41:45 won't be allowed back in. Everybody's done a wonderful
09:41:49 job up until this point, I assume it's going to
09:41:51 continue, but please understand I will not hesitate to
09:41:54 have you removed if there is any disruptive behavior.
09:41:56 We're in recess until your witness gets here.
09:41:59 MS. PEEBLES: Thank you.
09:42:03 (Whereupon, there was a recess.)
10:03:34 THE COURT: Ms. Peebles. Brittany Johnson,

10:03:36 right?

10:03:37 MS. PEEBLES: Yes.

10:04:45 THE COURT: Why don't you stand up please.
10:04:47 Place your left hand on the Bible, raise your right
10:04:49 hand.

BRITTANY JOHNSON, Called as a witness, having
10:04:52 been duly sworn, was examined and testified as follows:

10:04:52 THE COURT: Can you spell your last name for
10:04:55 the record?

10:04:55 THE WITNESS: J-O-H-N-S-O-N.

10:04:59 THE COURT: Have a seat, Ms. Johnson. Before
10:05:01 we go any further, I need to ask you whether or not you
10:05:03 consent to having your testimony both videotaped and
10:05:07 audio taped.

10:05:07 THE WITNESS: No.

10:05:08 THE COURT: Thank you. Ms. Peebles.

10:05:09 MS. PEEBLES: Yes.

DIRECT EXAMINATION

BY MS. PEEBLES:

10:05:10 **Q.** Brittany, do you currently reside in Oswego County?

10:05:12 **A.** Yes.

10:05:13 **Q.** And how long have you lived in Oswego County?

10:05:15 **A.** My whole life.

10:05:16 **Q.** How old are you?

10:05:16 **A.** Twenty-two.

10:05:17 **Q.** Do you know an individual by the name of Roger Breckenridge?
10:05:22 **A.** Yes, I do.
10:05:22 **Q.** How do you know Roger Breckenridge?
10:05:25 **A.** He's my nephew's -- I don't even know how to explain it. He has a kid with -- my nephew has a kid with his daughter.
10:05:44 **Q.** I see.
10:05:45 **A.** Yes.
10:05:46 **Q.** And do you know -- do you recall the first time you had met or were introduced to Roger Breckenridge?
10:05:57 **A.** Not really.
10:06:00 **Q.** Did you ever socialize with Roger Breckenridge?
10:06:03 **A.** Yes.
10:06:04 **Q.** And when was that?
10:06:05 **A.** A lot of times.
10:06:08 **Q.** How often?
10:06:10 **A.** I'd have to say every three months on and off.
10:06:15 **Q.** And could you give us a time frame of when that started until the last time you remember socializing with Roger Breckenridge?
10:06:22 **A.** The last time was in 2011, but the first time was 2009.
10:06:34 **Q.** Now when you say you had socialized with him, can you explain what you mean by that?

10:06:40 **A.** I really didn't communicate with him, just to like
10:06:45 talk with him and whatever, but he -- every time he got
10:06:48 drunk, that's when he just started blabbing off at the
10:06:53 mouth.

10:06:54 **Q.** Did he ever mention Heidi Allen in your presence
10:06:57 when you were socializing with him?

10:06:59 MR. MOODY: Judge, can we have a time frame?

10:07:01 THE COURT: Time frame of this same standing
10:07:03 objection I assume, right?

10:07:04 MS. PEEBLES: Yeah.

10:07:05 **A.** He didn't exactly --

10:07:06 **Q.** I'm sorry, they want to know a time frame.

10:07:08 **A.** Time frame?

10:07:08 **Q.** So if you could give us a rough idea about when you
10:07:12 recall Roger Breckenridge bringing up Heidi Allen in your
10:07:15 presence?

10:07:15 **A.** In 2011.

10:07:17 **Q.** And could you please tell us what you recall him
10:07:22 saying about Heidi Allen?

10:07:26 **A.** In detail?

10:07:27 **Q.** As much detail as you can remember.

10:07:29 **A.** He was drunk, and he put his beer up to the sky and
10:07:36 said, "that "B" is long gone."

10:07:38 **Q.** Said what is long gone?

10:07:41 **A.** That bitch.

10:07:43 **Q.** And how did you know he was referring to Heidi Allen?

10:07:48 **A.** I didn't at the time.

10:07:50 **Q.** And when -- after he said that, did you notice anything else about his demeanor after he said that?

10:07:58 **A.** About five minutes later he started crying.

10:08:05 **Q.** Were there other people present when this happened?

10:08:07 **A.** Yes.

10:08:07 **Q.** Who?

10:08:09 **A.** Kenneth Bradley, Karina (ph) Bradley and a couple of her friends that I don't know.

10:08:16 MR. MOODY: I'm sorry, I didn't catch the second name. Kenneth Bradley and --

10:08:21 THE WITNESS: Karina Bradley.

10:08:24 **Q.** And did anyone ever tell you -- well, strike that. Did you ever tell anyone about what Roger Breckenridge said to you in relation to Heidi Allen?

10:08:38 **A.** No.

10:08:38 **Q.** So you never came forward with any information.

10:08:47 **A.** No. I was too scared to.

10:08:50 **Q.** And did you contact me?

10:08:54 **A.** No.

10:08:55 MS. PEEBLES: No further questions.

10:09:04 THE COURT: Mr. Oakes or Mr. Moody?

10:09:06 CROSS-EXAMINATION

10:09:07 BY MR. MOODY:

10:09:08 **Q.** Brittany, you said you were twenty-two years old?

10:09:14 **A.** Yes.

10:09:14 **Q.** And so you -- back in 2011 you would have been about
10:09:17 eighteen?

10:09:17 **A.** Yes.

10:09:18 **Q.** And how old is Roger Breckenridge?

10:09:22 **A.** I don't know.

10:09:24 **Q.** Is he considerably older than eighteen back in 2011?

10:09:28 **A.** Yes.

10:09:28 **Q.** Now you said that he said that and apparently he
10:09:33 used "the bitch," is that the word he used?

10:09:36 **A.** Um hum.

10:09:37 **Q.** "Is long gone?"

10:09:38 **A.** Um him.

10:09:38 **Q.** And that's all he said?

10:09:41 **A.** That's all he said.

10:09:41 **Q.** And you mentioned that he was intoxicated?

10:09:46 **A.** Yes.

10:09:47 **Q.** And you said -- and had you been drinking at that
10:09:52 point in time?

10:09:52 **A.** No.

10:09:52 **Q.** Was anyone else there drinking?

10:09:54 **A.** Yes.

10:09:54 **Q.** Who else was drinking?

10:09:56 **A.** Karina Bradley.

10:09:58 **Q.** That was the only two people drinking?

10:10:01 **A.** Her friend but I don't know her friends.

10:10:02 **Q.** Female or male friend?

10:10:03 **A.** Male.

10:10:04 **Q.** Male friend, and was there anybody else using any
10:10:07 other kind of intoxicating substances, drugs or marijuana,
10:10:10 anything else?

10:10:11 **A.** Yes, they were, marijuana.

10:10:14 **Q.** Were you using any marijuana?

10:10:16 **A.** No.

10:10:17 **Q.** Who was using the marijuana?

10:10:19 **A.** Karina and Roger.

10:10:21 **Q.** And where was this -- was this a party or where --
10:10:26 where did this happen?

10:10:26 **A.** This happened on Route 11 in West Monroe.

10:10:32 **Q.** And whose house was it?

10:10:33 **A.** Karina Bradley's.

10:10:37 **Q.** Now you mentioned that you never came forward.

10:10:43 **A.** No.

10:10:44 **Q.** Do you -- do you own a smart phone?

10:10:51 **A.** Yes.

10:10:52 **Q.** Do you have a computer?

10:10:54 **A.** Um hum.

10:10:54 **Q.** Had you heard anything about this matter going on?

10:10:56 A. Yes.

10:10:57 Q. But you didn't come forward?

10:10:59 A. No. I was scared.

10:11:01 Q. And you said that this happened in 2011?

10:11:06 A. Um hum.

10:11:07 Q. And the first time you met Roger Breckenridge was in
10:11:11 2009 then?

10:11:12 A. I believe so, yes.

10:11:17 Q. He never told you then that he killed Heidi Allen
10:11:54 did he?

10:11:55 A. No.

10:11:55 Q. Never told you that he disposed of his body, or her
10:11:58 body, did he?

10:11:58 A. No.

10:12:00 MR. MOODY: No further questions.

10:12:01 MS. PEEBLES: Just one followup quick
10:12:03 question.

10:12:03 THE COURT: Sure.

REDIRECT EXAMINATION

10:12:04 BY MS. PEEBLES:

10:12:05 Q. Brittany, how did you know that he was talking about
10:12:07 Heidi Allen?

10:12:08 A. I didn't at the time until everything got pieced
10:12:13 together.

10:12:15 Q. And were -- was anyone else present there telling --

10:12:18 talking to you about why he was crying?

10:12:22 MR. MOODY: Objection. Calls for hearsay.

10:12:24 THE COURT: Sustained.

10:12:25 MS. PEEBLES: All right, no further questions.

10:12:26 THE COURT: Any recross?

10:12:29 MR. MOODY: No, Judge.

10:12:29 THE COURT: Ms. Johnson, you can step down
10:12:32 subject to recall or can she go?

10:12:33 MS. PEEBLES: She's done, Judge, thank you.

10:12:35 THE COURT: You're all set, thank you.

10:12:37 MS. PEEBLES: Judge, we're not resting at this
10:12:39 time, but I know that there's a break in the proceeding
10:12:43 for the prosecution to move forward.

10:12:44 THE COURT: Your witness here?

10:12:46 MR. OAKES: One of our witnesses is here, Your
10:12:48 Honor. I'd anticipated calling Dr. Knight first,
10:12:52 things moved a little bit more quickly than I
10:12:54 anticipated, so we do have Terry Whipple's available,
10:12:57 we can call him, and call Dr. Knight.

10:13:00 THE COURT: You have no problem calling out of
10:13:02 order, right?

10:13:04 MS. PEEBLES: That's fine, Judge.

10:13:07 MR. MOODY: People would call Terry Whipple.

10:13:59 THE CLERK: Raise your right hand, left on the
10:14:01 Bible.

10:14:02 TERRY WHIPPLE, Called as a witness, having been
10:14:05 duly sworn, was examined and testified as follows:

10:14:05 THE CLERK: Please state your name for the
10:14:10 record.

10:14:10 THE WITNESS: Terry Whipple.

10:14:12 THE CLERK: Spell your first name.

10:14:13 THE WITNESS: T-E-R-R-Y.

10:14:15 THE CLERK: And your last name.

10:14:16 THE WITNESS: W-H-I-P-P-L-E.

10:14:18 THE CLERK: Thank you.

10:14:20 THE COURT: Mr. Whipple, before we start --

10:14:22 THE WITNESS: Yes, sir.

10:14:22 THE COURT: -- I want to ask whether or not
10:14:23 you consent to having your testimony audio and/or
10:14:26 videotaped.

10:14:27 THE WITNESS: Neither, Judge.

10:14:28 THE COURT: Thank you.

10:14:29 THE WITNESS: Um hum.

10:17:47 (People's Exhibit III was marked for
identification).

(People's Exhibit JJJ was marked for
identification).

(People's Exhibit KKK was marked for
identification).

(People's Exhibit LLL was marked for

identification).

10:17:54 DIRECT EXAMINATION

10:17:54 BY MR. MOODY:

10:17:55 **Q.** Are you currently employed, sir?

10:17:56 **A.** Pardon me?

10:17:57 **Q.** Are you currently employed, sir?

10:17:58 **A.** No, I'm not.

10:17:59 **Q.** Are you retired?

10:18:00 **A.** Yes, I am.

10:18:00 **Q.** From where?

10:18:01 **A.** From the Oswego County Sheriff's Department.

10:18:03 **Q.** And how long were you employed by the Oswego County Sheriff's Department? 10:18:06

10:18:06 **A.** For almost thirty-two years.

10:18:08 **Q.** When did you retire?

10:18:10 **A.** In 2002.

10:18:14 **Q.** And what was your rank when you retired?

10:18:17 **A.** I was a lieutenant in charge of the road patrol at that time. 10:18:20

10:18:20 **Q.** And prior to becoming lieutenant what was your rank?

10:18:25 **A.** Before that I was criminal investigator.

10:18:28 **Q.** How long were you a criminal investigator?

10:18:31 **A.** From 1973 till the spring of 2002.

10:18:36 **Q.** At some point in time did you become involved in the investigation regarding the disappearance and kidnapping of 10:18:43

10:18:46 Heidi Allen?
10:18:46 **A.** Yes, sir, I was.
10:18:47 **Q.** Can you describe what your role was for the Court
10:18:50 please?
10:18:50 **A.** When I was first called, I was asked to come to the
10:18:55 New Haven fire barn, the Sheriff's Department had set up a
10:19:00 command center there, and that they wanted me to run one of
10:19:05 the phone desks.
10:19:06 **Q.** Would that have been on Easter Sunday of
10:19:10 ninety-four?
10:19:11 **A.** No. I did not come until after Easter Sunday. I
10:19:15 think it was the -- I think it was Monday was the first day
10:19:17 that I was there. They notified me I believe it was on
10:19:21 Easter night.
10:19:22 **Q.** Now, you said you went to the New Haven fire barn.
10:19:26 Why did you go there rather than to the Sheriff's
10:19:29 Department?
10:19:29 **A.** I was -- my lieutenant at the time had called me and
10:19:33 said to report there directly as -- and he had kind of
10:19:36 informed me as what was going on and, you know, that that's
10:19:39 where my presence was needed.
10:19:41 **Q.** And who was your lieutenant at the time?
10:19:43 **A.** At that time it was Lieutenant Dean Goodsell.
10:19:46 **Q.** What was going on at the New Haven fire barn?
10:19:51 **A.** I had been told that there had been a report of a

10:19:54 kidnapping at a local convenience store.

10:19:57 **Q.** Were there other Sheriff's Department members there?

10:20:00 **A.** Yes, there were.

10:20:01 **Q.** And how long -- well, for lack of a better word, was
10:20:05 a command center set up there?

10:20:07 **A.** Yes, it was.

10:20:07 **Q.** And how long did that go on?

10:20:09 **A.** I believe close to two weeks.

10:20:15 **Q.** And during those two weeks were -- was that the
10:20:20 basically the nerve center or the command center for Heidi
10:20:23 Allen investigation?

10:20:24 **A.** Yes, it was.

10:20:25 **Q.** Were people coming in and out of that place all the
10:20:30 time?

10:20:30 **A.** Yes.

10:20:31 **Q.** What were they, kind of -- were civilians included
10:20:34 in that?

10:20:35 **A.** Yes, they were.

10:20:35 **Q.** What were the civilians doing?

10:20:37 **A.** The Allen family as I understood it had hired a
10:20:42 professional from another state to coordinate searching the
10:20:47 area of the county and there was a lot of volunteers that
10:20:51 were with that organization. Because it was at the fire
10:20:55 department, there was fire personnel there and then of
10:20:58 course we had our people there.

10:20:59 **Q.** Were people bringing information and evidence to the fire barn?

10:21:04 **A.** Yes.

10:21:05 **Q.** What kind of stuff was being brought as far as evidence to the fire barn?

10:21:08 **A.** Well, sometimes people would stop in and say I don't know if this means anything but I found something side of the road 'cause I believe that the department had put out, you know, to the public, you know, any information, you know, that you could help with and stuff like that, so people would pick up stuff and bring it in and say look it, I found this at such and such a location, didn't know if it meant anything but I thought I'd drop it off.

10:21:33 **Q.** At some point in time did the Sheriff's Department move from the New Haven fire barn?

10:21:39 **A.** Yes, they did.

10:21:40 **Q.** Tell us about that.

10:21:41 **A.** Later on in the investigation when we were at the fire department, the Sheriff Nellis at the time felt that things were just too chaotic there, and he sat down with us and he said look it, he said, you know, I want to get out of here, get back to our own department and stuff like that and set up where we have control of it.

10:22:06 **Q.** When you say he sat down with us, who else did he sit down with if you remember?

10:22:11 **A.** Well, it was some of the investigators that were there, myself, Lieutenant Goodsell, and some of the other criminal investigators and some of the department personnel that were working the fire barn at that time.

10:22:23 **Q.** And around that same time did your role in the investigation change?

10:22:27 **A.** Yes, it did.

10:22:28 **Q.** Tell us about how it changed.

10:22:30 **A.** Well, Sheriff Nellis asked me, he said he felt that they were spinning their wheels and there was just too much, too much chaos and stuff like that, too many people in and out and -- and everything else, so he asked me to take charge of all of the records, all of the evidence, all of the documents, anything that we had pertaining to that case, sit down with it, go through it, review it, make certain that we had followed the leads, that we hadn't overlooked something and that we knew where everything was.

10:23:06 **Q.** When you say all the paperwork, would that be everything involved in the Heidi Allen investigation?

10:23:12 **A.** Yes.

10:23:12 **Q.** And where did you set up to do that?

10:23:15 **A.** Well, at the time that he suggested this to me, our department at that time is where the current Department of Motor Vehicles is in the City of Oswego, and we were -- that was really small quarters. In fact, where the

10:23:33 investigators' room was I think we had like three
10:23:35 investigators sharing desks at a time, so with all the
10:23:39 paperwork and stuff that they had, I knew that there was
10:23:42 just no way that I could do it there. The new Public
10:23:47 Safety Center had already been built, it had been sitting
10:23:49 vacant for a year, and I asked the sheriff if there was a
10:23:53 possibility that he couldn't pull some strings and get me
10:23:57 into one of the rooms in our new facility to where I had
10:24:00 the room to set this stuff up and where I, you know, I
10:24:03 wouldn't be bothered, and then there wasn't going to be
10:24:05 chaos all over the place.

10:24:07 **Q.** And when you say the new Public Safety Center, that
10:24:10 is where the Sheriff's Department is currently located?

10:24:12 **A.** That's correct, yes.

10:24:12 **Q.** And was that arranged?

10:24:13 **A.** Yes, it was.

10:24:14 **Q.** And what room did you set up in?

10:24:17 **A.** The room was right off of dispatch. Apparently it
10:24:22 was going to be or had scheduled to be a training room for
10:24:26 the department when the department, you know, got in there.

10:24:29 THE COURT: Mr. Moody, where are we going?
10:24:30 Can we get there quickly?

10:24:32 MR. MOODY: I'm just trying to establish his
10:24:33 basis of knowledge about how he knows about all the
10:24:36 paperwork and try to understand so the Court has a

10:24:37 clear picture.

10:24:38 THE COURT: Okay.

10:24:38 **Q.** Can you describe the process about how you would review the paperwork. You said that you were responsible for all the paperwork. Could you describe that process?

10:24:45 **A.** Yeah. Any paperwork that was turned in or came in to the department on lead sheets or statements or whatever and stuff like that had to come to me directly, and at that point in time I had department date stamp, and I would take and I would stamp the document and stuff like that so it -- and then, you know, file it or, you know, put it in a pile. Sometimes it was -- there was so much to read I could -- I would just date stamp it, put it in a pile and read it when I got to it.

10:25:15 **Q.** Did you go about also organizing the paperwork so that it could be referred to later?

10:25:23 **A.** Yes.

10:25:23 **Q.** Could you describe the process about how you did that?

10:25:26 **A.** Well, I would separate it by, oh, maybe like I'd set up a folder for suspicious vehicles, suspicious persons, there was stuff for evidence, statements, if there was a person, a person of interest and stuff like that I might set up a certain file with their name on it. Anything that I could separate it, if there was a sighting or possible

10:25:51 sighting I would set up a file for that. There was
10:25:55 numerous headings that I come up with.

10:25:57 **Q.** With regard to the paperwork itself, did you make
10:25:59 any -- would you have taken any steps to identify what --
10:26:03 what files that particular piece of paperwork would go in?

10:26:06 **A.** We had a master lead sheet which when a lead came in
10:26:11 it would be numbered, it would be assigned a number, and it
10:26:14 was a named reference to it, and then there was a little
10:26:17 bit of a synopsis as to what it was, and I would take a
10:26:20 look at that and then I would determine well, is this --
10:26:24 should this go into the suspicious vehicle file, should
10:26:28 this go into the suspicious person file or a sightings
10:26:31 file, and then I would make a notation on the master lead
10:26:35 sheet, and that's so that if anybody come in and wanted to
10:26:38 know well, where was such and such file, I could go down on
10:26:41 that master, either by name or number, look it up and say
10:26:46 okay, here's where I filed it, this is where to look for
10:26:49 it.

10:26:49 **Q.** Could a particular lead or piece of paperwork go
10:26:52 into more than one file?

10:26:53 **A.** Yes.

10:26:53 **Q.** Now, at some point in time -- well, actually you
10:26:57 mentioned something called a master lead sheet?

10:27:00 **A.** Yes.

10:27:02 **Q.** Okay. Would that have been different, the master

10:27:20 lead sheet have been different than the lead sheet that an
10:27:23 officer or somebody might fill out?

10:27:24 **A.** Yes.

10:27:25 **Q.** I want to show you what's been received as
10:27:28 Defendant's Exhibit 17 and ask you if you recognize that.

10:27:31 **A.** Yes.

10:27:34 **Q.** And what is that?

10:27:35 **A.** This would be one of the pages off of the master
10:27:38 lead sheet.

10:27:39 **Q.** Okay, and that -- and as you described it then,
10:27:42 there would be an actual physical lead sheet that would
10:27:46 correspond to that number, is that accurate?

10:27:49 **A.** Yes.

10:27:49 **Q.** Were you the only person working in handling all the
10:27:55 paperwork for this file through the Sheriff's Department?

10:27:58 **A.** No. When we came to the Sheriff's Department,
10:28:01 when -- when we came to the new building, I got the room
10:28:05 that I had requested, Sheriff Nellis asked me if I desired
10:28:10 some help 'cause he knew that the paperwork was already
10:28:14 staggering and I said yeah, I said I would -- I would like
10:28:18 some assistance, and he said well, he said is there anybody
10:28:22 that you would recommend or that you would like to work
10:28:25 with you, and I said that there was, and he asked who that
10:28:28 was, and I said that it was a deputy in the department by
10:28:30 the name of William Cromie.

10:28:32 **Q.** Is Deputy Cromie still alive?

10:28:35 **A.** No, sir, he's not.

10:28:36 **Q.** Now at some point in time obviously you became aware that one or more suspects had been arrested in this matter, is that accurate?

10:28:43 **A.** Yes.

10:28:44 **Q.** Did your role as handling all the paperwork continue after the arrest was made?

10:28:48 **A.** Yes.

10:28:48 **Q.** Did it continue -- how long did it continue?

10:28:51 **A.** Technically it continued right up until I retired.

10:28:54 **Q.** After indictments against Richard and Gary Thibodeau were -- were obtained, did you assist Chief Assistant District Attorney Dodd in handling discovery matters?

10:29:10 **A.** Yes.

10:29:11 **Q.** Was there a procedure set up to your knowledge to insure that all the material was turned over?

10:29:18 **A.** Yes.

10:29:18 **Q.** Could you describe that for us please.

10:29:21 **A.** Mr. Dodd -- when it came to that point of turning over materials, Mr. Dodd came down to me and said, you know, we've got to formulate how we're going to copy all of this stuff and get it to the attorneys, and we decided that at that point in time that it -- it would be kind of cumbersome for -- he said his staff was going to make the

10:29:42 copies, but it would be kind of cumbersome for them to run
10:29:45 from the second story of the Public Safety Building all the
10:29:48 way down to our department and back and forth and stuff
10:29:50 like that, so we decided at that point in time that we
10:29:53 would move my records that I was in control of to the Grand
10:29:58 Jury room which was located right next door to the District
10:30:03 Attorney's Office on the second floor of the building and
10:30:06 so I moved my work up there so that they would have easier
10:30:10 access to be able to make the copies.

10:30:13 MS. BIANCO: Excuse me, Judge. Can we have a
10:30:14 time frame?

10:30:15 THE COURT: Yes.

10:30:15 **Q.** Do you know approximately when that might have
10:30:17 occurred?

10:30:18 **A.** No, I'm sorry, I just --

10:30:19 **Q.** Would it have been after the indictments were
10:30:22 obtained on Richard and Gary Thibodeau?

10:30:25 **A.** I would assume but I -- as far as the time of year
10:30:28 or anything I -- I just don't remember.

10:30:30 **Q.** Now you mentioned that -- that the -- once the file
10:30:36 was moved up, that his staff was going to make the copies.
10:30:39 Did you understand that there was a procedure put in place
10:30:42 that there would be some monitoring to make sure that his
10:30:45 staff copied everything and distributed it?

10:30:47 **A.** Yes.

10:30:47 **Q.** Can you describe what that procedure is?
10:30:50 THE COURT: Can you stop for a second please?
10:30:52 Can you ask that question again? I'm not sure I
10:30:54 understand it.
10:30:54 MR. MOODY: It was a horrible question.
10:30:57 **Q.** After the file was moved up to the District
10:31:00 Attorney's Office, you mentioned that his staff, meaning
10:31:01 Chief Assistant DA Dodd's staff, was going to make the
10:31:04 copies. Was there a procedure put in place so to insure
10:31:07 that his staff copied all the paperwork in the file?
10:31:11 **A.** Yes.
10:31:11 MS. BIANCO: Objection to what he knows about
10:31:13 his staff being instructed. Was he present, was he
10:31:16 not?
10:31:16 THE COURT: Yes, foundation.
10:31:18 **Q.** Were you present on the discussions about how this
10:31:21 procedure would take place?
10:31:22 **A.** Mr. Dodd and I had a conversation in regards to the
10:31:29 turning over the material, that he wanted to make sure that
10:31:32 it all got turned over, and I said well, how do we do that,
10:31:35 and he come up with a system of marking the documents when
10:31:40 they were copied so that if we had to go back in because I
10:31:43 was still constantly filing documents in these folders, and
10:31:47 I said to him, I said how am I going to know whether or not
10:31:52 this has been copied or whether it's going to be redundant

10:31:55 if I -- just going to keep flooding them with paperwork,
10:31:57 and he said no, he said each -- each page he says is going
10:32:02 to be highlighted with a colored marker in the corner so he
10:32:07 says you'll have a visible record, I'll have a visible
10:32:10 record, and that way he says we'll know whether or not that
10:32:13 had been turned over.
10:32:14 **Q.** Do you know what color that was -- that marker was?
10:32:17 **A.** It was green.
10:32:18 **Q.** Green? At some point in time did you have to
10:32:24 memorialize that this was the procedure that was used?
10:32:29 **A.** I'm not certain I understand the question.
10:32:31 **Q.** Well, let me get at it this way. I thought that was
10:32:35 marked.
10:33:16 (People's Exhibit MMM was marked for
10:33:18 identification).
10:33:18 **Q.** Showing you what's been marked as People's Exhibit
10:33:21 MMM, do you recognize that document?
10:33:23 **A.** Yes, I do.
10:33:41 **Q.** And what is this document?
10:33:43 **A.** It was a document regarding the procedure as to how
10:33:48 things were turned over and marked and we had to sign it to
10:33:52 verify that we were familiar with the procedure.
10:33:54 **Q.** When you say we had to sign it, does that include
10:33:56 you?
10:33:56 **A.** Yes.

10:33:57 **Q.** And do you recognize any of the other signatures on that document?

10:33:59 **A.** Yeah, I do.

10:34:00 **Q.** Who else's signatures do you recognize?

10:34:02 **A.** Some of the secretaries from our department and I also recognize some of the secretaries that worked for the District Attorney's Office at that time and also Mr. Dodd's signature is on there.

10:34:15 **Q.** Okay, and does that appear to be the original document?

10:34:19 **A.** I would say so, yes.

10:34:21 MR. MOODY: Showing Exhibit MMM to defense counsel, Judge, I would move to admit.

10:34:31 MS. BIANCO: Judge, a brief voir dire?

10:34:33 THE COURT: Sure.

10:34:33 VOIR DIRE EXAMINATION

10:34:34 BY MS. BIANCO:

10:34:39 **Q.** Investigator Whipple, you didn't create this document did you?

10:34:45 **A.** No, no, ma'am, I did not.

10:34:46 **Q.** You just signed it?

10:34:48 **A.** That's correct.

10:34:48 **Q.** And you stated some of the people who signed this were the secretaries?

10:34:52 **A.** Yes.

10:34:52 **Q.** And they had the authority to -- to copy and give
10:34:56 out information, is that what you're saying?

10:34:57 **A.** No, they had the -- they were the people that made
10:35:01 the copies for -- that were to be turned over.

10:35:03 **Q.** I'm sorry, I didn't quite get that.

10:35:05 **A.** They were the people who made the copies, and if
10:35:08 they made the copies or were involved in making any copies
10:35:12 of the case file, they had to sign that memo.

10:35:19 MS. BIANCO: No objection.

10:35:21 THE COURT: MMM is moved in.

(People's Exhibit MMM was received in
evidence).

10:35:26 BY MR. MOODY:

10:35:27 **Q.** During the time that copies were being made, were
10:35:29 you present at any point in time while those copies were
10:35:32 being made?

10:35:34 MS. BIANCO: Objection to any point in time,
10:35:36 Judge.

10:35:37 THE COURT: Can you be a little more specific?

10:35:40 MR. MOODY: Well, I'll withdraw that question,
10:35:42 get at it this way I think.

10:35:44 **Q.** Do you know how many copies were made when copies
10:35:47 were being made?

10:35:48 MS. BIANCO: Objection to when. Is this
10:35:50 unlimited in time.

10:35:51 THE COURT: I'm not even sure of the question.
10:35:53 I mean do you mean on a -- when copies were made and
10:35:55 how many copies were made of a particular document
10:35:57 or --

10:35:57 MR. MOODY: Okay, I see the problem.

10:35:59 **Q.** As part of the procedure, do you know how many
10:36:02 copies were being made?

10:36:03 **A.** Three to four I believe.

10:36:05 **Q.** Okay, and --

10:36:06 THE COURT: Hold on just a second. Can I ask
10:36:09 a question? Three to four of each document that was
10:36:10 requested?

10:36:11 THE WITNESS: Yes. No, of each document that
10:36:12 we had no matter what it was.

10:36:14 THE COURT: Okay.

10:36:14 THE WITNESS: Yes.

10:36:15 **Q.** And with regard to the green marks, would those go
10:36:20 on the copied documents or on the originals?

10:36:23 **A.** On the original.

10:36:25 **Q.** Now, at some point in time did you also assist Mr.
10:36:33 Dodd in discovery process by having contact with any of the
10:36:39 defense attorneys?

10:36:39 **A.** Yes, sir.

10:36:40 **Q.** Could you describe that for us?

10:36:41 **A.** Mr. Dodd had called me and asked me to be present at

10:36:46 his office.

10:36:47 MS. BIANCO: Objection. Hearsay, Your Honor.

10:36:49 THE COURT: I'm going to allow it.

10:36:51 MS. BIANCO: And also foundation as to some 10:36:52 point in time. Can we have at least a reference when 10:36:55 this point in time is happening.

10:36:56 THE COURT: That's fine.

10:36:58 **Q.** In mid-December of ninety-four, in specific, did you 10:37:04 have some contact with one or more of the defense attorneys 10:37:07 with regard to discovery in this matter?

10:37:09 **A.** I believe so, yes.

10:37:10 **Q.** And who would that have been?

10:37:10 **A.** I believe the first was Mr. Fahey.

10:37:13 **Q.** Can you describe that contact you had with him?

10:37:17 **A.** I was supposed to meet him and Mr. Dodd at the 10:37:21 District Attorney's Office like at nine o'clock in the 10:37:25 morning. I don't remember what day of the week it was, but 10:37:30 I was there and Mr. Fahey was there, and we were both in 10:37:36 the waiting room of the District Attorney's Office. Mr. 10:37:38 Dodd was late so we just kind of hung out and waited.

10:37:43 **Q.** Did you have a conversation with Attorney Fahey?

10:37:47 **A.** Yes, we did. I mean nothing about the case, I mean 10:37:49 it was just small talk, I mean it was wintertime and we 10:37:53 were talking about the weather and winters and you know.

10:37:56 **Q.** And at some point in time did Mr. Dodd show up?

10:38:00 **A.** Yes, sir, he did.

10:38:01 **Q.** What happened after Mr. Dodd showed up?

10:38:03 **A.** When he did we -- he came out, got both Mr. Fahey 10:38:07 and myself and brought us into the District Attorney's 10:38:11 Office and into the Grand Jury room, and at that time 10:38:17 that's when the conversations took place.

10:38:19 **Q.** And -- and what happened after this conversation?

10:38:22 **A.** When we got into the -- into the Grand Jury room, 10:38:26 Mr. Dodd informed Mr. Fahey that --

10:38:29 MS. BIANCO: Objection to what Mr. Dodd is 10:38:31 saying, Your Honor. Hearsay.

10:38:33 THE COURT: It's just -- I'm going to allow 10:38:34 it. It doesn't -- what are you offering it for?

10:38:37 MR. MOODY: Well, it goes to access to the 10:38:39 file, Judge.

10:38:40 THE COURT: I'll allow it.

10:38:41 **A.** Mr. Dodd informed Mr. Fahey that I was going to be 10:38:48 the liaison between the defense attorneys and the District 10:38:52 Attorney's Office and the Sheriff's Department, and that if 10:38:55 they had questions or needed other information out of the 10:39:00 file or needed copies or any visual aids, reproductions or 10:39:08 wanted to see or listen to tapes or see audio or video and 10:39:12 stuff like that, that I -- I was the one that had to be 10:39:15 contacted first and that I would make certain that it 10:39:19 happened.

10:39:19 **Q.** And did -- after this conversation did -- what happened after -- after that? Did you and Attorney Fahey stick around or what happened?

10:39:28 **A.** I believe for a short period of time Mr. Fahey looked at some of the stuff. It was not for an extended period of time, no.

10:39:37 **Q.** When you say "some of the stuff," some of the stuff from where?

10:39:41 **A.** Well, we had our total case file up there so I had all my case file out on tables, and we had videos, we had tapes, stuff like that on which, you know, I told him if he wanted to listen to any of those he could.

10:39:57 **Q.** And did he take that opportunity?

10:40:00 **A.** Not at that time, no.

10:40:01 **Q.** To your recollection, did Attorney Fahey receive anything at the end of that meeting?

10:40:07 **A.** Not that I remember.

10:40:09 **Q.** At some point in time did you have any further contact with Attorney Fahey with regard to him visiting the file?

10:40:16 **A.** Yes. There was another time Mr. Fahey came to the office and -- to look at the file.

10:40:23 **Q.** Okay, do you remember approximately when that was?

10:40:26 **A.** No, sir, I don't.

10:40:29 **Q.** If I -- if I were to show you a memo that -- from

10:40:33 March of 1994, might that refresh your recollection?

10:40:36 **A.** Possibly.

10:40:36 **Q.** Showing you what's been marked as Exhibit KK, or
10:40:39 KKK, excuse me, do you recognize that?

10:40:46 THE COURT: You say March of ninety-four?

10:40:49 MR. MOODY: Excuse me. March of ninety-five,
10:40:51 I'm sorry.

10:41:04 **A.** Yes, I do.

10:41:05 **Q.** And what is that?

10:41:06 **A.** That was a memo to me from Mr. Dodd dated March
10:41:11 fourteenth of 1995.

10:41:13 **Q.** Okay, and does this indicate -- does this refresh
10:41:16 your recollection as to when approximately Attorney Fahey
10:41:20 came up to visit and view matters in the file?

10:41:23 **A.** Yes.

10:41:23 **Q.** And when was that, would that have been?

10:41:27 **A.** Again, that would have been March of ninety-five.

10:41:31 **Q.** To your recollection did he come alone?

10:41:32 **A.** Not at that time.

10:41:33 **Q.** Do you remember who he came with?

10:41:35 **A.** At that time I don't know if -- if that was the time
10:41:40 Ms. Bianco came with him or whether his investigators came
10:41:45 with him, I believe their names were Culver, it was a
10:41:49 husband and wife team.

10:41:50 **Q.** Now, Fahey represented Gary Thibodeau, is that

10:41:57 accurate?

10:41:57 **A.** Yes.

10:41:58 **Q.** And do you know who represented Richard Thibodeau?

10:42:01 **A.** Attorney Bill Walsh.

10:42:04 **Q.** And with regard to Mr. Walsh, did he ever come up
10:42:07 to -- to view anything from the file?

10:42:11 **A.** Yes, he did.

10:42:11 **Q.** Do you know approximately how many times?

10:42:16 **A.** The best that I can remember, I know -- I -- I
10:42:20 remember at least twice that he came.

10:42:41 **Q.** Showing you Exhibit KK, or KKK, I'm going to ask you
10:42:46 now that I've taken it out of the file if you could turn to
10:42:49 the second page and ask you if you recognize anything on
10:42:51 that.

10:42:52 **A.** Yes, I do.

10:43:09 **Q.** And what are those?

10:43:10 **A.** It's a handwritten note that I had taken on March
10:43:16 twenty-first of 1995 that I directed to Mr. Dodd as to who
10:43:23 was present at one of the meetings.

10:43:25 **Q.** And those are your notes?

10:43:26 **A.** Yes, it's in my handwriting, yes.

10:43:29 **Q.** And they would have been made contemporaneously
10:43:32 either right during the meeting or right after it?

10:43:35 **A.** Correct.

10:43:35 **Q.** And you said you gave those to whom?

10:43:37 **A.** The copy of this?

10:43:40 **Q.** The notes or copy of the notes.

10:43:42 **A.** I made it available to Mr. Dodd.

10:43:44 **Q.** Okay, all right, and is that the original?

10:43:49 **A.** Yes.

10:43:53 MR. MOODY: Showing Exhibit KKK to defense
10:43:57 counsel, Judge, move to admit.

10:44:03 MS. BIANCO: May I voir dire just for a
10:44:32 moment, Your Honor?

10:44:33 THE COURT: Sure.

10:44:35 VOIR DIRE EXAMINATION

10:44:35 BY MS. BIANCO:

10:44:37 **Q.** On this March fifteenth date, excuse me, March
10:44:41 twenty-first, 1995, those were all the people who were
10:44:43 present at this meeting, is that right?

10:44:45 **A.** Yes.

10:44:45 **Q.** And nowhere on this list am I present, Randi Bianco?

10:44:53 **A.** Not at that time, no.

10:44:53 MS. BIANCO: No objection.

(People's Exhibit KKK was received in evidence).

10:44:58 BY MR. MOODY:

10:44:58 **Q.** Showing you again Exhibit KKK, who was present to
10:45:04 review materials in that file?

10:45:06 **A.** On that particular date, it was attorneys Walsh, 10:45:10 attorneys Fahey, a Robert and a Laura Culver who were Mr. Fahey's private investigators and -- and myself.

10:45:21 **Q.** And where would this meeting have taken place?

10:45:24 **A.** This would have been in the Grand Jury room at the District Attorney's Office.

10:45:28 **Q.** And was the entire file in the Grand Jury room at that point in time?

10:45:31 **A.** Yes, it was.

10:45:32 **Q.** Okay, and do your notes reflect whether or not any materials were either copied or given to either Mr. Walsh or Mr. Fahey at that point in time?

10:45:46 **A.** There are notes as to copies of cassette tapes and stuff like that that I believe that we played for them.

10:46:00 **Q.** So you played for them, is that --

10:46:03 **A.** Yes, yes.

10:46:04 **Q.** Was it -- now there was also the -- you said the entire file was there. That would have included all the paperwork?

10:46:10 **A.** All the -- yes.

10:46:11 **Q.** Do you have a recollection one way or the other whether they looked through any of the paperwork in the file at that point in time?

10:46:16 MS. BIANCO: Objection to the "they."

10:46:17 THE COURT: Be more specific.

10:46:18 **Q.** Attorney Fahey.

10:46:21 **A.** I would say yes to the best of my recollection.

10:46:24 MS. BIANCO: Object. It is or isn't.

10:46:27 THE COURT: Hold on. He can finish answering
10:46:29 the question.

10:46:29 **A.** The best of my recollection Mr. Fahey did look at
10:46:32 some of the files.

10:46:33 **Q.** Was any of the file restricted to him at that point
10:46:36 in time?

10:46:36 **A.** No.

10:46:37 **Q.** Do you have any recollection whether either one of
10:46:40 his investigators looked through any of the file?

10:46:44 **A.** Yes.

10:46:44 **Q.** And which investigator if you remember?

10:46:47 **A.** It was both of them. They were together so.

10:46:50 **Q.** How about Attorney Walsh, do you have any
10:46:52 recollection whether Attorney Walsh looked through any of
10:46:55 the paperwork in the box?

10:46:58 **A.** I don't remember Mr. Walsh looking through any
10:47:00 paperwork at that time.

10:47:01 **Q.** Now, you mentioned that while at the New Haven fire
10:47:24 barn there were a number of -- well, I shouldn't say a
10:47:28 number, there were things being brought in by civilians as
10:47:31 you described them, things they might find on the side of
10:47:34 the road and other things?

10:47:35 **A.** Correct.

10:47:36 **Q.** How much material was brought in to the New Haven fire barn if you remember?

10:47:40 **A.** Well, there was quite a bit really. I mean almost seemed like it was clean up the roadside week, and the thing of it was lots of time, and I know they meant well, people would just stop by and say well, just give this to somebody and tell them it came so sometimes they would give it to a fireman or a civilian and not necessarily a police officer and they would bring it in to maybe some of our people or just bring it in and lay it down and say well, so and so came by and said that they found this on such and such a road.

10:48:14 **Q.** At some point in time in late April or early May of ninety-five was an attempt, or excuse me, I shouldn't say an attempt, was there -- was somebody assigned to try and catalog that evidence if you remember?

10:48:30 **A.** If -- if the stuff had come in, our procedure was if if it came in and it came to a police officer, he -- he was supposed to log it as evidence and which means he had to secure it, and we have various ways of securing it, paper bags, plastic bags, boxes, canisters, whatever, we had a variety of products and stuff like that, he was supposed to log it as he would evidence in any type of criminal case and mark it, you know, with a -- with the case number and stuff like that, sign it and so that we would process

10:49:06 through the evidence of our department. Some of that was
10:49:09 done, a lot of it was not, especially in the early,
10:49:12 especially the first day in the early hours of the
10:49:15 investigation when things were so chaotic, and as I say, a
10:49:18 lot of stuff that was brought in found on the roadside was
10:49:22 just thrown in boxes and, you know, put -- stored
10:49:25 underneath a table or whatever until such a time as we
10:49:29 moved out of there.

10:49:30 **Q.** Okay, but after you moved out of there where was
10:49:32 that material brought?

10:49:33 **A.** It was then brought into the Sheriff's Department.
10:49:36 At that time the old Sheriff's Department as I refer to it
10:49:41 where the current -- the motor vehicle department is, the
10:49:45 evidence portion of a lot of the physical evidence was
10:49:49 brought into there and was logged in and stored in the
10:49:54 evidence room of that particular building, and then
10:49:58 subsequently in 1995, when we moved into the new Public
10:50:04 Safety Center, then all of that evidence was brought over
10:50:06 and put into the new evidence room in the new Public Safety
10:50:11 Center.

10:50:11 **Q.** And are you familiar with investigator -- well, he
10:50:13 was an investigator then, Nicholas Kleist?

10:50:17 **A.** Yes.

10:50:17 **Q.** And at some point in time did Investigator Kleist
10:50:20 become involved with the evidence in the Heidi Allen

10:50:23 matter?

10:50:23 **A.** Yes.

10:50:24 **Q.** What was his role?

10:50:25 **A.** The plan was before the Heidi Allen incident 10:50:27 happened, we were sort of gearing up to moving into the new 10:50:31 Public Safety Center, and it was going to be a lot of major 10:50:34 changes in our department. A lot of it was we were going 10:50:37 to become computerized, we were going to be -- going to be 10:50:40 a lot bigger, a lot more efficient and everything else, and 10:50:44 Investigator Kleist had an interest in forensics and wanted 10:50:50 to get into, you know, the evidence part of it also and so 10:50:56 he was -- I can't say he was assigned to me, but it was 10:51:01 discussed that, you know, he would help me with stuff like 10:51:04 that, so I showed him the ropes as to how things were 10:51:07 logged and how to log evidence and how we stored it and the 10:51:10 procedures that went along with it.

10:51:12 **Q.** I want to show you what's been marked as People's 10:51:14 Exhibit JJJ.

10:51:26 (Whereupon, there was a pause in the 10:52:13 proceeding.)

10:52:13 **A.** Okay.

10:52:14 **Q.** Have you seen that document before?

10:52:21 **A.** The top letter from Mr. Dodd, I don't remember 10:52:31 seeing that.

10:52:32 **Q.** Okay, how about the documents that are paper clipped

10:52:35 with it?

10:52:36 **A.** Later on I did, yes.

10:52:38 **Q.** Okay, I want to show you now what appears to be
10:52:41 Exhibit 11-A. Have you seen -- if you could compare those
10:52:46 two documents, do they appear to be the same?

10:52:48 THE COURT: That People's or defense?

10:52:50 MR. MOODY: Defendants 11-A.

10:53:10 (Whereupon, there was a pause in the
10:53:30 proceeding.)

10:53:30 MS. BIANCO: Your Honor, the documents speak
10:53:32 for themselves whether or not they're the same. I
10:53:34 don't know why we're having the witness look at them.
10:53:36 They're already admitted.

10:53:38 THE COURT: Mr. Moody?

10:53:38 MR. MOODY: Judge, I just --

10:53:40 THE COURT: 11-A is already admitted.

10:53:41 MR. MOODY: That's what I was trying to get at
10:53:43 is 11-A is already admitted.

10:53:45 THE COURT: They seem to be the same.

10:53:47 MR. MOODY: Okay, showing JJJ to defense
10:53:53 counsel, Judge, I would move to admit.

10:54:04 MS. BIANCO: We'd object to this. He wasn't
10:54:07 the author of the document. He states he didn't see
10:54:09 the cover letter, he doesn't know when it was sent. If
10:54:12 anyone should be seeking to introduce this document, it

10:54:14 would be the witness Dodd, not this witness.

10:54:19 THE COURT: Lay any foundation regarding
10:54:21 business record?

10:54:22 MR. MOODY: Well, I could, Judge, but Dodd
10:54:24 will be here, I can work around that.

10:54:29 THE COURT: Okay, sustained.

10:54:30 **Q.** Showing you Defendant's Exhibit 11A, if you can take
10:54:37 a look at that. The first -- the second page on that, what
10:54:44 is that? What is that?

10:54:45 **A.** It's a report from Investigator Kleist.

10:54:50 **Q.** Okay, and does it contain any stamps on it?

10:54:53 **A.** Yes, it does.

10:54:54 **Q.** Whose stamps are on it?

10:54:56 **A.** The District Attorney's Office.

10:54:58 **Q.** And what's the date on that stamp?

10:55:01 **A.** May sixteenth, 1995.

10:55:03 **Q.** Now I want to show you what's been marked as
10:55:09 People's Exhibit LLL. Do you -- do you recognize -- I know
10:55:16 it's wrapped up, but do you recognize that, the front page
10:55:19 of that document?

10:55:21 **A.** Yes.

10:55:28 **Q.** And what is the first page of that document?

10:55:30 **A.** It's a page from the evidence log of -- from the
10:55:35 Sheriff's Department.

10:55:36 **Q.** Okay, and does it contain any handwriting on it?

10:55:39 **A.** The evidence tag does, yes.

10:55:42 **Q.** Not the evidence tag itself, the document, the first page of the document that's inside it.

10:55:48 **A.** Yes.

10:55:48 **Q.** Whose handwriting is on that?

10:55:50 **A.** Up in the right-hand corner it's mine.

10:55:53 **Q.** Okay, I'm going to open Exhibit 11, or excuse me, LLL up and ask you to look at the remaining pieces of documentation in that and ask you if you recognize those.

10:56:22 (Whereupon, there was a pause in the proceeding.)

10:56:23 **A.** Yes, I do.

10:56:36 **Q.** And what are those?

10:56:37 **A.** The second page is a copy of the information from Investigator Kleist and the last page is a copy of the evidence tag from that piece of evidence.

10:56:53 **Q.** Okay, and do the second and third pages have any handwriting on it that you recognize?

10:56:58 **A.** Yes.

10:56:58 **Q.** Whose handwriting is on it that you recognize?

10:57:00 **A.** Both pages has my handwriting on it.

10:57:02 **Q.** And where is that located?

10:57:03 **A.** On the first page it's --

10:57:06 **Q.** The first page or the second page?

10:57:08 **A.** The second page of the document, it's about halfway

10:57:10 down the document, and on the last page it's in the upper
10:57:16 right-hand corner.

10:57:29 MR. MOODY: Showing Exhibit LLL to defense
10:57:35 counsel, Judge, I'd move to admit.

10:57:51 MS. BIANCO: Your Honor, I believe this is
10:57:52 already in evidence.

10:57:53 MS. PEEBLES: We have 11-A.

10:57:55 MS. BIANCO: If he wants to admit it again,
10:57:58 that's fine.

10:57:58 THE COURT: Mr. Moody, is it already in?

10:57:59 MR. MOODY: It is, Judge, except there is a
10:58:00 difference between the one they have and the one we
10:58:02 have which is what I intend to ask him about.

10:58:06 **Q.** Showing you Exhibit 11, or excuse me, LLL, you said
10:58:11 that that document, you recognize that document as having
10:58:15 handwriting on it?

10:58:16 **A.** Yes.

10:58:17 **Q.** And does it also on the first page have any other
10:58:21 markings?

10:58:22 **A.** Yes, it has the -- a date stamped on the bottom of
10:58:26 it.

10:58:26 **Q.** Okay, how about any markings up in the top
10:58:29 right-hand corner?

10:58:30 **A.** Yes.

10:58:30 **Q.** And what marking is in the top right-hand corner?

10:58:33 **A.** It's my handwriting, and also the green mark of the procedure for turning it over, making a copy of it.

10:58:40 **Q.** Okay. Now, turning to the -- you said the first page of that document has a date stamp on it.

10:58:46 **A.** Yep.

10:58:47 **Q.** What date stamp is on it?

10:58:49 **A.** May twenty-third of 1995.

10:58:51 **Q.** Okay, and now turning to the second page, is -- you said there was some handwriting on that. Is there also a date stamp on the second page of that?

10:58:59 **A.** There's my handwriting on it and there are two date stamps on it.

10:59:04 **Q.** And what are the two date stamps?

10:59:06 **A.** The first date stamp is May sixteenth of 1995 and that is a stamp from the District Attorney's Office, and the second one is the May twenty-third, 1995 Oswego County Sheriff's Department.

10:59:20 **Q.** Do you have an explanation about why it appears that the District Attorney's Office stamp is on May sixteenth and your stamp is approximately six or seven days later?

10:59:28 **A.** Yes, I do. At this point in time Mr. Dodd had -- had asked them to try to find some -- some documentation.

10:59:38 MS. BIANCO: Objection to Mr. Dodd's --

10:59:39 THE COURT: Hold on a second.

10:59:41 MS. BIANCO: -- facts here, hearsay.

10:59:42 THE COURT: I don't know who "they" are first.
10:59:47 Let's find out who "they" are.

10:59:48 THE WITNESS: Investigator Yerdon and
10:59:50 Investigator Kleist had been detailed to try to find
10:59:53 some documentation.

10:59:54 THE COURT: Hold on. How do we get by
10:59:57 hearsay?

10:59:57 MR. MOODY: Well, Judge, I'm only offering it
11:00:00 not so much for the truth of the matter they were
11:00:02 assigned to it, simply to explain why there are two
11:00:04 date stamps on it.

11:00:05 THE COURT: I'll allow it.

11:00:06 MR. MOODY: And DA Dodd and Investigator
11:00:08 Yerdon, actually Investigator Kleist, will all be here
11:00:12 at some point in time.

11:00:12 THE COURT: I'll allow it.

11:00:13 MS. BIANCO: It is offering for the truth of
11:00:16 the matter asserted, Judge.

11:00:17 THE COURT: I disagree. I'm going to allow
11:00:20 it.

11:00:20 **Q.** You can finish your answer.

11:00:21 **A.** These two investigators were detailed to find this
11:00:25 documentation. Apparently they did and -- and showed
11:00:30 Assistant DA Donald Dodd immediately when they -- when --
11:00:34 and he got it, and I'm assuming that they stamped it at

11:00:37 that point in time.

11:00:37 MS. BIANCO: Objection to his assumptions.

11:00:39 THE COURT: Sustained.

11:00:42 THE WITNESS: The District Attorney's Office
11:00:44 stamped --

11:00:45 MS. BIANCO: Objection. There's no question
11:00:46 being asked, Judge.

11:00:46 THE COURT: You have to wait for a question.

11:00:48 **Q.** There's a District Attorney's Office stamp on there?

11:00:50 **A.** Yes, sir, there is.

11:00:51 **Q.** And then how was it that you would have stamped it?
11:00:54 Would you have stamped that seven days later?

11:00:56 **A.** Yes.

11:00:57 **Q.** How was it that you ended up getting it seven days
11:01:00 later?

11:01:00 **A.** That's when it was turned over to me.

11:01:03 **Q.** And then you would have put in the handwriting on
11:01:05 there, is that accurate, at that same point in time?

11:01:09 **A.** Yes, sir.

11:01:11 **Q.** I'm showing you Exhibit 11-A, and comparing the
11:01:17 second page of Exhibit 11-A and the second page of Exhibit
11:01:26 LLL, are they the same document with the exception of the
11:01:28 handwriting and the second stamp?

11:01:29 **A.** Correct. There's only one stamp on this one.

11:01:34 **Q.** On which one, 11-A?

11:01:36 **A.** Yes. On the second page there is just a District Attorney's Office stamp and my handwriting is not on there.

11:01:43 **Q.** And that's exhibit which one?

11:01:46 **A.** 11-A.

11:01:56 **Q.** Now you mentioned that the -- that the third page of Exhibit LLL, what is that again?

11:02:04 **A.** That's an evidence tag that we place on either our bags or our containers after they're sealed.

11:02:25 **Q.** Now showing you People's Exhibit B, do you recognize that?

11:02:38 **A.** Yes.

11:02:44 **Q.** And what is that?

11:02:46 **A.** That is the original evidence tag.

11:02:49 **Q.** That is -- when you say the original evidence tag --

11:02:51 **A.** That is shown on these copies.

11:02:52 **Q.** On Exhibit 11 or LLL?

11:02:55 **A.** I believe this one.

11:03:03 **Q.** It's on the bag, that's why?

11:03:05 **A.** Yes, it's LLL.

11:03:20 **Q.** Now in the process of reviewing all of the documents with regard to the Heidi Allen case, did you become familiar with various people who may have been somehow a part of the investigation?

11:03:43 **A.** Yes.

11:03:43 **Q.** To your recollection, did the name James Steen ever

11:03:48 come up?

11:03:48 **A.** No, sir, it did not.

11:03:50 **Q.** Do you recognize the name Roger Breckenridge?

11:03:53 **A.** Yes, I do.

11:03:54 **Q.** What was his involvement or what is your
11:03:56 recollection of whatever involvement he might have had in
11:03:59 the Heidi Allen investigation?

11:04:01 **A.** I saw his name on some witness lists when the trials
11:04:05 came up, and I believe that he had also been a neighbor or
11:04:12 friend of Mr. Thibodeau.

11:04:14 **Q.** And do you recognize the name Michael Bohrer?

11:04:17 **A.** Yes, I do.

11:04:18 **Q.** And what was your recollection about Michael Bohrer
11:04:22 with regard to the Heidi Allen case?

11:04:22 **A.** During the course of the investigation, we had had a
11:04:27 couple of different times when Mr. Bohrer contacted us with
11:04:32 information regarding the case and somebody would go out
11:04:35 and interview him.

11:04:36 **Q.** Now, are you familiar with something called a punch
11:04:39 card system?

11:04:41 **A.** Yes, sir.

11:04:42 **Q.** And what is the punch card system?

11:04:44 **A.** At the time in the Sheriff's Department in the
11:04:48 dispatch, if a call came in, the dispatcher would take the
11:04:53 punch card which was a two- or three-page card, put it into

11:04:58 a time stamp, and it would stamp the date and time that an
11:05:04 officer, that he -- first that he received the call and
11:05:07 then the time that an officer was dispatched to the call
11:05:11 and I believe the time that the officer arrived at the
11:05:14 call, and then the final stamp I think was when the officer
11:05:19 left the call, completed the call.

11:05:21 **Q.** Now you said that that would have been in existence
11:05:23 in ninety-four?

11:05:24 **A.** Yes.

11:05:25 **Q.** How long had it been in existence prior to 1994?

11:05:29 **A.** I'm not certain, but for quite a few years.

11:05:35 **Q.** Would it -- would it have been in existence in the
11:05:37 end of 1991 or early 1992?

11:05:40 **A.** I believe so.

11:05:41 **Q.** Now, as part of your review of the documents in this
11:05:47 case and the -- and the evidence in this case, did you
11:05:50 become familiar with efforts that were made to look for
11:05:56 Heidi Allen and search in the county?

11:05:59 **A.** Yes.

11:05:59 **Q.** Could you describe those for me?

11:06:01 **A.** The -- as I had mentioned earlier, the Allen family
11:06:06 had hired outside firm to conduct the search of the county
11:06:13 of the areas around the store and the outlying areas.
11:06:18 There was also a point in time when we were still at the
11:06:21 fire barn when we -- somebody had contacted the governor of

11:06:26 New York State and the National Guard was brought in also and they were involved in it, and then there were like search and rescue groups and volunteer groups that were familiar with search teams and stuff like that were also part of it.

11:06:44 **Q.** And it's -- at any point in time did you become aware of whether they had documented or -- or shown where they had searched, those various groups?

11:06:54 **A.** Well, I know that they had a map at one time that I saw in -- it was in the fire barn, and it was -- actually it was one of -- the county used to have large color coded maps, township maps of Oswego County, and they had one of these on a -- I don't remember if it was on an easel or if they had it taped to the wall, but when they would complete a township or an area for search and stuff like that, they would either put striation marks through it or cover it over with a -- some type of color or paper, something like that, so that you could visually look at it and say no, we don't have to worry about that because that's taken care of.

11:07:35 **Q.** And what was your understanding of how much the county was -- how much of the County of Oswego was searched looking for Heidi Allen?

11:07:41 **A.** From what I remember, I mean it was pretty much the whole county.

11:07:44 MS. BIANCO: Objection to what he remembers.
11:07:47 Either he remembers specific parts or not. Pretty much
11:07:49 the whole county doesn't cut it.

11:07:51 THE COURT: Overruled. It's his memory. Go
11:07:53 ahead. You can answer it.

11:07:54 **A.** From my memory of looking at the map, I would have
11:07:57 to say that I believe that the majority of the county had
11:08:01 been searched.

11:08:01 **Q.** Would that have included the townships of Parish?

11:08:04 **A.** Yes.

11:08:05 **Q.** And Mexico?

11:08:05 **A.** Yes.

11:08:22 MR. MOODY: I have no further questions,
11:08:24 Judge.

11:08:24 THE COURT: Ms. Bianco, can I just have a
11:08:27 second please.

11:08:27 (Whereupon, there was a pause in the
proceeding.)

11:08:46 THE COURT: Ms. Bianco, whenever you're ready.
11:08:57 Mr. Moody, do you want to give Ms. Bianco the mike?

11:09:00 MR. MOODY: Sure.

CROSS-EXAMINATION
11:09:43 BY MS. BIANCO:

11:09:44 **Q.** Investigator Whipple, you were the lead investigator
11:10:13 in charge of evidence and documents in the Heidi Allen

11:10:16 case, is that correct?

11:10:17 **A.** Of the documentation, yes.

11:10:19 **Q.** Okay, and this was one of the biggest cases of your
11:10:23 career, is that fair to say?

11:10:25 **A.** One of them, yes.

11:10:26 **Q.** You were in charge of organizing the leads, correct?

11:10:31 **A.** Organizing the paperwork.

11:10:33 **Q.** Well, the paperwork was put into leads wasn't it?

11:10:36 **A.** Yes.

11:10:36 **Q.** And you were in charge of organizing those leads, is
11:10:39 that right?

11:10:39 **A.** Once they come in, yes.

11:10:42 **Q.** And you developed a system to organize the leads, is
11:10:46 that correct?

11:10:46 **A.** That's correct.

11:10:47 **Q.** And in terms of the paperwork, everything went to
11:10:51 you first, is that right?

11:10:53 **A.** It was supposed to, yes.

11:10:55 **Q.** It was supposed to. Was that your directive that it
11:11:00 was supposed to go to you?

11:11:01 **A.** Yes.

11:11:01 **Q.** So are you saying that it was supposed to?
11:11:04 Oftentimes things didn't go to you?

11:11:05 **A.** Well, when I wasn't there, any paperwork that came
11:11:09 in had to go to the front desk, to the dispatch desk where

11:11:13 there was a box there that it would be put into, and when I came back in, that would be the first place I would go, pick it up at that point in time.

11:11:22 **Q.** Okay, so the paperwork if it wasn't to you it was directed to your box which went to you, correct?

11:11:27 **A.** Correct, yes.

11:11:28 **Q.** It wasn't given to various other investigators if you weren't there, is that right?

11:11:32 **A.** No, no.

11:11:33 **Q.** And when you assigned lead numbers, you assigned them chronologically, is that right?

11:11:40 **A.** Yes.

11:11:40 **Q.** Is it fair to say that a lead would consist of any information that would typically require somebody to look at it or follow up, correct?

11:11:50 **A.** I would say that would be fair, yeah.

11:11:53 **Q.** And the leads came from a variety of sources, is that right?

11:11:57 **A.** Um hum.

11:11:58 **Q.** They came from anonymous phone calls?

11:12:00 **A.** Yes.

11:12:01 **Q.** Letters?

11:12:01 **A.** Yes.

11:12:02 **Q.** Sightings? Yes?

11:12:04 **A.** Yes.

11:12:06 **Q.** Anyone with information, correct?

11:12:07 **A.** Correct.

11:12:08 **Q.** And in addition to following leads, you interviewed a number of people to learn as much about Heidi Allen's background as possible, is that right?

11:12:17 **A.** I didn't personally, no, the investigators did.

11:12:20 **Q.** Okay, and that would turn into leads, correct?

11:12:23 **A.** Correct.

11:12:23 **Q.** And the leads would consist of interviews of -- of family members, correct?

11:12:29 **A.** It could possibly, yes.

11:12:31 **Q.** Her parents, correct?

11:12:33 **A.** On Ms. Allen?

11:12:35 **Q.** Yes.

11:12:35 **A.** Yes, I believe so.

11:12:36 **Q.** Her friends, correct?

11:12:37 **A.** I believe so.

11:12:38 **Q.** Her boyfriend?

11:12:39 **A.** Yes.

11:12:40 **Q.** Her boyfriend's family? Yes?

11:12:43 **A.** I don't remember the boyfriend's family.

11:12:45 **Q.** Okay, but anyone who could possibly provide insight and background to Heidi Allen, that information was put in a lead sheet, correct?

11:12:54 **A.** Yes, it was supposed to.

11:12:57 **Q.** It was supposed to. Do you have some doubts that that was done?

11:13:00 **A.** No.

11:13:00 **Q.** You would agree that finding out as much as possible about Heidi Allen's background would be imperative to trying and determine who may harm her, is that fair?

11:13:12 **A.** It's fair.

11:13:13 **Q.** Okay, and you want to establish possible reasons that someone might want to abduct Heidi Allen, correct?

11:13:19 **A.** Correct.

11:13:20 **Q.** And these leads were voluminous, is that right?

11:13:24 **A.** Yes.

11:13:24 **Q.** I believe you testified on direct that the information you received, the paperwork was staggering, is that right?

11:13:31 **A.** That's correct.

11:13:32 **Q.** And you were falling behind in some of the paperwork?

11:13:35 **A.** In the beginning, yes.

11:13:36 **Q.** And you were constantly trying to file documents, is that right?

11:13:41 **A.** We would -- on a daily basis we were filing documents, yes.

11:13:45 **Q.** And sometimes some of those documents got away from you, is that right?

11:13:49 MR. MOODY: Objection, Judge.
11:13:50 Characterization "away from you."

11:13:51 THE COURT: Yeah. Can we -- I'm confused.
11:13:54 Are you saying that he developed all the leads or he
11:13:56 just simply filed the leads?

11:13:58 MS. BIANCO: He's filed them.

11:13:59 THE COURT: Just make sure you're clear
11:14:00 because your questions sound like he's the investigator
11:14:03 who is following up all these leads and he's giving the
11:14:06 officers leads and that's not what you're implying with
11:14:08 your questions.

11:14:09 MS. BIANCO: Absolutely not, Judge.

11:14:10 THE COURT: Your understanding is this
11:14:11 investigator simply took the leads and then filed them
11:14:14 when they came to him.

11:14:15 MS. BIANCO: Right. He's the central
11:14:17 repository, is that correct?

11:14:18 THE WITNESS: Correct.

11:14:19 THE COURT: That's what I was getting to.
11:14:22 Thank you.

11:14:22 **Q.** And this staggering amount of documents that were
11:14:24 coming to the New Haven fire department, when you say
11:14:28 staggering, do you mean multiple boxes of documents?

11:14:34 **A.** I wouldn't say multiple boxes, no.

11:14:36 **Q.** Well, what does staggering mean to you?

11:14:38 **A.** Well, I mean, you know, two to three-hundred reports.

11:14:42 **Q.** A day?

11:14:43 **A.** Lead sheets. I don't know if it was a day, but the thing of it was is before we -- we got -- I was assigned to this, after about a two-week period, all of this stuff was just brought out to New Haven and was kept there and just sat there.

11:14:59 **Q.** And you're saying sometimes people would drop things off with some of the volunteer firemen?

11:15:04 **A.** Correct.

11:15:05 **Q.** And sometimes people would drop things off to anybody who was sitting at the table, is that right?

11:15:10 **A.** Correct.

11:15:11 **Q.** And you weren't able to keep track of all this, is that correct?

11:15:15 **A.** Correct.

11:15:15 **Q.** When you began numbering the leads, you did this so there would be some kind of order to that, is that right?

11:15:29 **A.** That was already started before I became involved in this case.

11:15:32 **Q.** But you continued that?

11:15:34 **A.** I continued what had already been started, yes.

11:15:37 **Q.** And some of these leads pertained to potential suspects, is that right?

11:15:40 **A.** Yes.

11:15:41 **Q.** And also to possible motives that someone might want to harm Ms. Allen, correct?

11:15:46 **A.** Probably, yes.

11:15:48 **Q.** And a lead may also concern the whereabouts of her body or remains, correct?

11:15:54 **A.** Could be, yes.

11:15:55 **Q.** You would agree that no lead was too big or too small in a case of this magnitude.

11:16:02 **A.** Right.

11:16:02 **Q.** Would you agree with that? Yes?

11:16:03 **A.** Yes.

11:16:04 **Q.** Now, you were the one who assigned investigators to the leads that would come in, is that right?

11:16:12 **A.** No.

11:16:13 **Q.** You didn't assign them?

11:16:15 **A.** No.

11:16:16 **Q.** Who assigned them?

11:16:17 **A.** Well, that usually went to our rank structure. We had a meeting of all of the investigators every day, and we had a lieutenant in charge of the Criminal Investigation Division, and we would sit down and we would discuss leads that had come in, what we thought was important, and if there was something that they felt needed to be followed up on or if there were people that needed to be interviewed, a

11:16:41 decision was made as to which investigator was going to go
11:16:44 out and interview them.

11:16:45 **Q.** So this was made as a group as to what leads were
11:16:48 important?

11:16:48 **A.** I would say it was a group decision. Everybody had
11:16:52 an input on it.

11:16:54 **Q.** And was Chief Assistant District Attorney Donald
11:16:58 Dodd at these meetings as well?

11:16:59 **A.** No.

11:17:00 **Q.** Never?

11:17:00 **A.** I won't say never. I mean he might have been once
11:17:03 or twice at a meeting or come down to see us or whatever
11:17:06 but we may have been meeting at the time.

11:17:09 **Q.** Was he made aware of the leads that were coming in?

11:17:13 MR. MOODY: Can we have a time frame?

11:17:15 THE COURT: Time frame. Are you talking about
11:17:17 New Haven?

11:17:17 **Q.** The initial time frame, let's start with April of
11:17:21 1994, was Mr. Dodd being made aware of the leads that were
11:17:24 coming in?

11:17:26 **A.** I have no idea.

11:17:28 **Q.** How about in May of ninety-four?

11:17:33 **A.** There's a possibility we -- 'cause we were in the --
11:17:36 I think we were in the building at that time.

11:17:38 **Q.** In the -- in what building?

11:17:40 **A.** In the new building at that time. I think we'd been
11:17:42 set up in the new training room.

11:17:45 **Q.** But you're not certain who was updating Mr. Dodd
11:17:48 with the leads, is that right?

11:17:50 **A.** No because he wasn't the district attorney at that
11:17:53 time.

11:17:53 **Q.** Okay, and he wasn't in charge of handling the case?

11:17:56 **A.** It was him and Mr. Gross that spent most of the time
11:18:01 with us.

11:18:01 **Q.** Well, who was updating the prosecutors as to what's
11:18:04 going on, do you know?

11:18:06 **A.** Anybody that they wanted to talk to, I mean
11:18:09 basically they would come down talk to me, or if we had a
11:18:12 meeting, if Lieutenant Goodsell was there, they could talk
11:18:15 to him.

11:18:16 **Q.** But nobody from your department was reaching out to
11:18:19 them and saying hey, we've got this lead, we want you to
11:18:22 know about it, is that your testimony?

11:18:26 MR. MOODY: Again, can we have a time frame?
11:18:28 We still in May of ninety-four?

11:18:31 MS. BIANCO: April of ninety-four.

11:18:32 **A.** There may have been some that they thought was
11:18:36 worthwhile.

11:18:36 **Q.** But you don't know?

11:18:39 **A.** I'm not positive, no.

11:18:39 **Q.** Do you know during the course of this investigation from April of ninety-four let's say to December of ninety-four, were you contacting the prosecutor about any new leads that were coming in to tell them what was going on?

11:18:55 **A.** I would keep him informed of what I, you know, if there was something I thought was major, yes.

11:19:00 **Q.** Only if you thought it was major, is that right?

11:19:02 **A.** Or the group, if we thought that it was worth, you know, something that we had question about or, you know, if we had an opinion on.

11:19:11 **Q.** Now you date stamped the documents as the leads came in, is that right?

11:19:19 **A.** Yes.

11:19:20 **Q.** And you date stamped them before you even read the document, is that right?

11:19:25 **A.** Yes.

11:19:26 THE COURT: That's a mischaracterization. He said sometimes. He didn't say every time.

11:19:31 **Q.** Sometimes you would date stamp the documents before you read them?

11:19:34 **A.** Yes.

11:19:35 **Q.** But every time they were going to be date stamped, is that right?

11:19:38 **A.** Every one was date stamped, yes.

11:19:40 **Q.** And all the original documents until it was moved to
11:19:46 the District Attorney's Office were kept at the Sheriff's
11:19:49 Department, is that right?

11:19:49 **A.** That's right.

11:19:50 **Q.** And these leads were followed up before and after
11:19:56 the trial, is that correct?

11:19:58 **A.** Correct.

11:19:59 **Q.** Now, I want to talk about the command center that
11:20:04 was established initially. The command center that was
11:20:08 established, who was running the command center?

11:20:12 **A.** Well, I wasn't there on the first day so I would
11:20:15 have -- I would assume it would be Lieutenant Goodsell
11:20:18 because he was in charge of the Criminal Investigation
11:20:20 Division.

11:20:20 **Q.** So you don't know personally what documents came in
11:20:23 on the first day that the command center opened, is that
11:20:26 fair?

11:20:27 **A.** Not on the first day because I wasn't there.

11:20:29 **Q.** And when you took charge of the file, you wanted to
11:20:37 make sure that that file was kept in order, correct?

11:20:41 **A.** Well, Sheriff Nellis wanted me to make certain that
11:20:44 we had everything, that it was in order, and if we needed
11:20:47 to find something, we could find it.

11:20:49 **Q.** Because you didn't want to miss a potential lead, is
11:20:53 that right?

11:20:53 **A.** Correct.

11:20:54 **Q.** I want to ask you some questions about Heidi Allen's
11:20:56 informant documents that were created by Deputy VanPatten,
11:21:01 the ones you looked at, Exhibit 11-A. Do you remember
11:21:04 looking at that on direct examination?

11:21:05 **A.** Yes, I do.

11:21:06 **Q.** And VanPatten is the one who created those informant
11:21:11 documents, is that right?

11:21:11 **A.** I believe so, yes.

11:21:13 **Q.** Okay, and in those documents Heidi Allen had an
11:21:17 index card with her name, pedigree information and
11:21:22 photograph, is that right?

11:21:22 **A.** Yes.

11:21:23 **Q.** And she was assigned a code name, is that correct?

11:21:26 **A.** I believe so.

11:21:26 **Q.** And you were made aware that this information was
11:21:29 maintained by VanPatten, is that right?

11:21:34 **A.** In the beginning I wasn't aware of these files.

11:21:38 **Q.** Can you tell me what lead number the Heidi Allen
11:21:42 confidential informant file was? Did it have a lead?

11:21:46 **A.** I do not know.

11:21:47 **Q.** Okay, so you don't know if you put a lead number on
11:21:50 that particular document or not?

11:21:54 **A.** The first time I saw it was -- it came in as
11:21:59 evidence, they had -- again, Investigator Kleist and

11:22:04 Investigator Yerdon had found the documents.

11:22:07 **Q.** I'm sorry, I didn't hear the last part of that.

11:22:09 **A.** I said Investigator Kleist and Investigator Yerdon had located the documents. Apparently there had been some questions as to where they were. I never even knew about these documents, and then apparently they found them, took them to the District Attorney's Office, showed him, they date stamped them, he then logged it as evidence, brought it down to me, I date stamped it, and then it was categorized and put in different lead sheet files.

11:22:37 **Q.** Okay, well, when did this happen?

11:22:39 **A.** Whatever date that I stamped it. It has the Sheriff's Department stamp on it.

11:22:46 **Q.** So if the date stamp says May twenty-third, that's 1995, that is when you would have received it for the first time, correct?

11:22:55 **A.** Yes.

11:22:55 **Q.** And you were the central repository of the records, correct?

11:23:00 **A.** Supposedly, yes.

11:23:01 **Q.** And you never saw this CI file until May of 1995, is that right?

11:23:07 **A.** Correct.

11:23:08 **Q.** And you didn't assign it a lead number in your leads, is that right?

11:23:13 **A.** Not that I remember.

11:23:15 **Q.** Okay, were you aware that the date that Heidi Allen was abducted that there was an informant file brought to the command center? Were you aware of that?

11:23:31 **A.** No.

11:23:32 **Q.** I want to talk to you about when the command center moved to the Sheriff's Department. You said it was about two weeks from the time Heidi Allen was abducted in April, Easter Sunday, to the time it was moved to the Sheriff's Department, correct?

11:23:52 **A.** I think it was within a two-week period, yes.

11:23:54 **Q.** Okay, and all of the originals meanwhile were kept at that command center?

11:23:59 **A.** Yes.

11:24:00 **Q.** Okay, and can you describe the structure of the command center please?

11:24:04 **A.** Well, it was a large room in the fire hall itself. They had a bunch of folding tables set up and they brought in some phone banks in places where, you know, police officers could sit, we could answer phones, take leads, take information, stuff like that, and there were as I remember other tables and stuff they had set up around it so that you could put office supplies on.

11:24:33 **Q.** And on your direct examination you initially described the command center as chaos, is that right?

11:24:38 **A.** Yes.

11:24:39 **Q.** So there was no security at this command center with
11:24:42 the documents, correct?

11:24:44 **A.** No. I would say no.

11:24:46 **Q.** No security.

11:24:48 **A.** Well, other than the police officers that were
11:24:50 there.

11:24:51 **Q.** Well, volunteer firemen, correct, they're in -- in
11:24:55 the --

11:24:55 **A.** They were in there, yes.

11:24:56 **Q.** Civilians bringing things in, yes?

11:25:00 **A.** Correct.

11:25:00 **Q.** Nothing was kept under lock and key, correct?

11:25:02 **A.** Not there, no.

11:25:03 **Q.** I want to talk to you about the security of the room
11:25:09 that you established at the Oswego County Sheriff's
11:25:13 Department. Did you refer to this room as the situation
11:25:16 room?

11:25:17 **A.** Correct.

11:25:17 **Q.** Okay, and that area was restricted to authorized
11:25:23 personnel only, correct?

11:25:24 **A.** Yes.

11:25:24 **Q.** And you wanted to maintain the integrity of the
11:25:28 investigative files, correct?

11:25:31 **A.** Right.

11:25:31 **Q.** You didn't want people taking documents or evidence from those files in the situation room, correct?

11:25:37 **A.** Correct.

11:25:37 **Q.** Now, despite your best efforts, while the evidence or the leads were in the security in the situation room, there was a breach of security wasn't there?

11:25:49 MR. MOODY: I'm going to object, Judge.

11:25:50 **A.** Not that I'm aware of.

11:25:52 THE COURT: He answered not that he's aware of.

11:25:55 **Q.** Well, would something refresh your recollection like your internal memo?

11:25:58 **A.** Maybe.

11:25:59 THE COURT: What's your objection?

11:26:01 MR. MOODY: Well, Judge, I'm not sure the relevance of this to -- to -- the issue is the security of the --

11:26:03 THE COURT: Where are you going with this, Ms. Bianco? I was about to ask the same question.

11:26:08 MS. BIANCO: Your Honor, things were taken from this room and I -- it's our position that the defense never got certain materials because certain things may have been taken, may have been missing, but there's definitely some critical evidence that was taken from that situation room and he documented it in

11:26:24 an internal report.

11:26:25 THE COURT: I'll allow the internal report, that's fine. Don't go too far though into a conspiracy theory though.

11:26:39 **Q.** Showing you what's been marked as Defense Exhibit 156, do you recognize that document, sir?

11:27:10 (Whereupon, there was a pause in the proceeding.)

11:27:35 **A.** Yes, I recognize it.

11:27:36 **Q.** You wrote that didn't you?

11:27:37 **A.** Yes, I did.

11:27:38 **Q.** And that's an internal memo, correct?

11:27:41 **A.** Yes.

11:27:41 **Q.** And it documents the breach that occurred in the situation room in August of 1994, is that correct?

11:27:51 THE COURT: You're dragging the mike, Ms. Bianco.

11:27:55 MS. BIANCO: Oh, okay.

11:27:57 THE COURT: She has a flair for the dramatic doesn't she? Ask the question again, Ms. Bianco.

11:28:06 **Q.** In August of 1994, the situation room was compromised wasn't it?

11:28:13 **A.** I believe, yes.

11:28:13 **Q.** Okay, and you discovered that someone had removed the master file on Kristine Duell, is that right?

11:28:25 **A.** Correct.

11:28:25 **Q.** And her file, when you found the file in the situation room, was lying on top of the files that was in an open position, correct?

11:28:35 **A.** Correct.

11:28:36 **Q.** And you had no idea who went through Kristine Duell's file, correct?

11:28:41 **A.** No.

11:28:42 **Q.** And you don't know what was taken out of that file, correct?

11:28:45 **A.** I don't know if anything was.

11:28:47 **Q.** And that's why you wrote this internal memo about the security breach, correct?

11:28:52 **A.** Correct.

11:28:53 **Q.** And at that point you stated under no circumstances should any of the original files, pictures or paperwork leave the situation room unless it was cleared with you.

11:29:06 **A.** Correct.

11:29:07 **Q.** Isn't that right? I want to talk to you about Kristine Duell and her role in the Heidi Allen investigation. She was the owner of the D & W wasn't she?

11:29:17 **A.** I believe so.

11:29:18 **Q.** And Heidi Allen had worked at the D & W for a couple years before her abduction, up until the time of her abduction, correct?

11:29:27 **A.** I'm not aware.

11:29:29 **Q.** You don't know how long she worked there?

11:29:31 **A.** No.

11:29:31 **Q.** You weren't involved in -- in that aspect of the
11:29:34 case?

11:29:35 MR. MOODY: Objection, Judge. He said he
11:29:36 didn't know.

11:29:37 THE COURT: Sustained.

11:29:37 **Q.** Do you know whether her schedule was posted that she
11:29:42 was working Easter morning in 1994?

11:29:44 **A.** No, I don't.

11:29:45 MR. MOODY: I'm going to object, Judge. We're
11:29:46 kind of far afield from --

11:29:48 THE COURT: The direct? Yes. We are far
11:29:49 afield from the direct.

11:29:53 **Q.** Well, are you aware that Heidi Allen's confidential
11:29:59 informant documents were dropped in the parking lot of the
11:30:03 D & W store? Are you aware of that?

11:30:06 **A.** Later on I was, yes.

11:30:08 **Q.** And you knew that Kristine Duell had found those
11:30:12 documents, correct?

11:30:13 **A.** I didn't know who found them.

11:30:15 **Q.** Oh, you weren't sure?

11:30:16 **A.** No, I wasn't sure.

11:30:17 **Q.** Well, that punch card that you talked about, that

11:30:20 punch card system, you didn't see that punch card that came
11:30:24 in about found property at the D & W?

11:30:28 **A.** I might have seen the punch card but I don't
11:30:31 remember the name on it.

11:30:32 MR. MOODY: The original's in evidence.

11:30:48 THE COURT: Defense 144?

11:30:50 MR. MOODY: I think so. Something like that.

11:30:52 MR. OAKES: 144.

11:31:29 THE COURT: Ms. Bianco, do you have a copy of
11:31:32 it?

11:31:32 MS. BIANCO: I do.

11:31:36 **Q.** Showing you a copy of Exhibit 144 that's already
11:31:41 been received into evidence, do you recognize that?

11:31:48 **A.** I recognize it as a punch card, yes.

11:31:50 **Q.** Okay, what lead was that assigned?

11:31:57 THE COURT: If you know. He's already -- we
11:32:00 haven't established he was assigning lead numbers.
11:32:03 He's the person who received the leads.

11:32:06 MS. BIANCO: Well, I'll ask that question.

11:32:07 THE COURT: Okay, please.

11:32:08 **Q.** Were you the one -- when documents were coming to
11:32:11 you first, were you the one who was giving them lead
11:32:14 numbers?

11:32:14 **A.** Not at first, no.

11:32:15 **Q.** Not at first, but how about after the two weeks at

11:32:18 the New Haven command center were you giving the lead numbers?

11:32:21 **A.** Yes.

11:32:22 **Q.** Could you tell me if you gave that punch card a lead number?

11:32:28 **A.** On the face of the punch card, no, because it's the wrong year.

11:32:34 **Q.** And you said you were aware that Kristine Duell found the CI documents?

11:32:42 MR. MOODY: Objection. He didn't say that.

11:32:44 MS. BIANCO: He didn't say that, I'm sorry.

11:32:45 THE COURT: Sustained, sustained.

11:32:46 **Q.** So you didn't know about that, is that correct?

11:32:48 **A.** I didn't know who found them, no.

11:32:49 **Q.** Okay, and no one brought a report in to you that said the confidential informant documents were found at the D & W, here they are, no one brought that report to you?

11:33:00 **A.** Not that particular, the -- that file on her eventually got to me.

11:33:06 **Q.** That was in May of 1995, is that --

11:33:08 **A.** I believe that was the one that was double stamped, yes.

11:33:11 **Q.** Okay, well, I'm asking you whether or not you received reports concerning the dropping of the confidential informant documents at the D & W, did you

11:33:26 receive reports and give that a lead number?

11:33:29 **A.** Not that I remember because I don't believe it was dropped at that time.

11:33:32 **Q.** Okay, so that wasn't discussed at a -- one of these meetings that you did daily about possible motives for someone would want to abduct her, that she was --

11:33:44 **A.** I mean we talked about, you know, possible drug abuse or sexual abuse or robbery. I mean we went over a bunch of things as to why she may have been abducted.

11:33:54 **Q.** Well, let me ask you this specifically. Did you go over the fact that her confidential informant information was dropped in the parking lot of the D & W parking lot and maybe that's the reason someone might have wanted to abduct her? Did you discuss that at any of these daily meetings?

11:34:11 **A.** Not at first, no.

11:34:12 **Q.** Okay, well, when did you discuss it?

11:34:14 **A.** The first that I was aware of it was when the items that came up came to the district attorney and then were turned over to me afterwards. I --

11:34:23 **Q.** In May?

11:34:23 **A.** In May, right.

11:34:24 **Q.** So you definitely didn't know about those things in December of 1994, is that right?

11:34:31 **A.** Run that one by me again.

11:34:36 **Q.** You did not know about Heidi Allen's confidential

11:34:39 informant file and the fact that it was dropped in the D & W parking lot in December of 1994, you did not know that then.

11:34:47 **A.** I did not know all the particulars of it, no.

11:34:50 **Q.** Well, did you know some of the particulars of it?

11:34:52 **A.** There had been mention, you know, of this during the course of some of the meetings that we had, but I was told that that matter had been taken care of on the first day of the investigation and there was nothing to it.

11:35:04 **Q.** Okay, well, when was this conversation that there was nothing to it? When was this conversation?

11:35:08 **A.** It was during, before the trials.

11:35:11 **Q.** Okay, well, would this be significant information to put in a lead that she was an informant and her packet of information was dropped in the parking lot? Would that be significant to you to put in a lead?

11:35:24 **A.** If I had it.

11:35:26 **Q.** Okay, so you didn't have it and that's why you didn't do it, is that right?

11:35:29 **A.** I can't do it if I don't have it.

11:35:31 **Q.** Right, and that particular punch card, you didn't make that a lead because you didn't have it, correct?

11:35:38 **A.** Right because this was 1992.

11:35:41 **Q.** Okay, so that wouldn't have been in the investigative file, in the Sheriff's Department's file of

11:35:49 Heidi Allen's material, correct?

11:35:52 **A.** I don't know where this would have been.

11:35:54 **Q.** But you don't remember that document in the Sheriff's Department's investigative original file that you had in your situation room, correct?

11:36:03 **A.** No, I don't, no, not right now.

11:36:06 **Q.** And in term -- may I have that document please? In terms of the confidential informant information, that wasn't in the Sheriff's Department's original file until -- well, strike that. That wasn't in the Sheriff's Department's original file before it was transferred to the DA's Office, is that right? Wasn't --

11:36:39 MR. MOODY: Judge, I'm going to object. I don't understand the question.

11:36:41 THE COURT: I'm not sure if I understand the question. You can rephrase it.

11:36:44 **Q.** The items in 11-A, the ones you looked at with her picture, her code name, her informant card, do you remember that?

11:36:53 **A.** Yes.

11:36:53 **Q.** That wasn't in the Sheriff's Department's file at the time you gave it to the District Attorney's Office, correct?

11:37:00 **A.** Correct.

11:37:01 **Q.** Okay, and you didn't give that file over until after

11:37:06 August, after the indictment of Gary and Richard Thibodeau,
11:37:12 is that what you testified to?

11:37:12 **A.** What?

11:37:13 **Q.** Your original file didn't go to the DA's Office
11:37:16 until after Gary and Richard Thibodeau were -- were
11:37:21 indicted, correct?

11:37:21 **A.** I believe, yes.

11:37:22 **Q.** Okay, and in December of 1994, those documents, 11
11:37:30 and 11-A, were not in the file that you were keeping charge
11:37:35 of at the District Attorney's Office, is that correct?

11:37:37 **A.** Not that I'm aware of.

11:37:38 **Q.** Okay. Well, is it -- is it fair to say by the time
11:37:58 the Thibodeaus were arrested, you were quite confident that
11:38:02 Gary and Richard were responsible for Heidi Allen's
11:38:05 abduction, correct?

11:38:06 **A.** Yes.

11:38:07 MR. MOODY: Objection. His opinion's
11:38:08 irrelevant.

11:38:09 THE COURT: Sustained.

11:38:10 **Q.** Well, you didn't have -- the file was no longer in
11:38:16 the Oswego County Sheriff's Department, correct?

11:38:18 **A.** Correct.

11:38:19 **Q.** Okay, the whole file with the originals was now at
11:38:23 the DA's office, correct?

11:38:24 **A.** Correct.

11:38:24 **Q.** And you did not have a copy of that file at your office, correct?

11:38:27 **A.** No.

11:38:28 **Q.** But you were still date stamping the documents, new leads as you got them, correct?

11:38:38 **A.** Yes.

11:38:39 **Q.** And then you would send them over to the District Attorney's Office, correct?

11:38:43 **A.** I took them over to the district -- I -- I maintained the file in their office, and anything new that came in or anything that had to be added, I added it to the file up there.

11:38:55 **Q.** And this was to make sure that everything got to one place, correct?

11:38:59 **A.** Right.

11:39:00 **Q.** And --

11:39:00 **A.** Everything that we had.

11:39:02 **Q.** Correct, and those documents in 11 and 11-A, you did not walk those over to the District Attorney's Office, correct?

11:39:10 **A.** Correct.

11:39:11 **Q.** I want to talk to you a little bit about this system that you developed, you and Mr. Dodd developed with the green check mark. Do you remember giving that testimony?

11:39:32 **A.** Correct.

11:39:33 **Q.** The green check mark had -- the purpose of the green check mark was to say that the document was copied, correct?

11:39:41 **A.** Yes.

11:39:41 **Q.** It didn't say when it was sent to anyone, correct?

11:39:44 **A.** Right.

11:39:45 **Q.** It didn't say who it was sent to, correct?

11:39:47 **A.** Right.

11:39:47 **Q.** And you don't know when or who sent these documents with the green check mark, is that right?

11:39:53 **A.** Correct.

11:39:55 **Q.** Now you -- you testified on direct examination that Mr. Fahey came to the DA's Office on at least two occasions, right?

11:40:06 **A.** Two that I remember, maybe three.

11:40:08 **Q.** Okay, and you kept a pretty good log, and I think it was LLL, if I can find LLL.

(Whereupon, there was a pause in the proceeding). 11:40:41

11:40:41 **Q.** So for example, in Exhibit KKK, you marked down who the people were who attended that meeting, correct?

11:40:53 **A.** I believe.

11:40:53 **Q.** March twenty-first?

11:40:54 **A.** I believe so.

11:40:55 **Q.** Okay, so for the other one or two meetings with

11:41:00 Attorney Fahey, did you have a similar marking or a log of
11:41:03 when he came?

11:41:04 **A.** Not that I remember.

11:41:05 **Q.** Okay, so you only did this on occasion, on one
11:41:08 occasion.

11:41:09 **A.** Yes, that I believe. I may have done it on another,
11:41:13 I don't know. I just don't remember.

11:41:15 **Q.** And is it your testimony that I came to the District
11:41:23 Attorney's Office?

11:41:23 **A.** On one occasion.

11:41:24 **Q.** Was that -- would that have been in December?

11:41:28 **A.** I'm not certain.

11:41:29 **Q.** Are you aware of the fact that I didn't get involved
11:41:31 in the case till after Gary Thibodeau was convicted?

11:41:34 **A.** Maybe, but I --

11:41:35 MR. MOODY: Objection. Is that a question?

11:41:36 THE COURT: Are you being argumentative?

11:41:38 **Q.** Did you ever see any document, log sheet or letter
11:41:45 before Gary Thibodeau's conviction where I was involved in
11:41:48 the case, one document.

11:41:51 **A.** I don't know about documents. I just know that
11:41:54 there was one time that you were at the District Attorney's
11:41:56 Office. What the date was I can't tell you.

11:41:58 **Q.** Could that have been after Gary Thibodeau's
11:42:00 conviction?

11:42:01 **A.** I have no idea. I know that trials were still going
11:42:05 on, the case was still going on.

11:42:07 **Q.** And I was there in the -- in your office?

11:42:10 **A.** Not in my office.

11:42:11 **Q.** In the District Attorney's Office?

11:42:12 **A.** In the District Attorney's Office.

11:42:14 **Q.** And you're as sure about this as you are as sure of
11:42:16 the rest of your testimony, is that right?

11:42:17 MR. MOODY: I'm going to object, Judge.

11:42:19 THE COURT: First, it's an argumentative
11:42:21 statement. Second, why's it relevant when you were
11:42:23 there?

11:42:23 MS. BIANCO: Well, Judge, if they're trying to
11:42:25 say that I'm somehow involved in this discovery process
11:42:27 and they're giving it to me or I could have found this,
11:42:29 I've already testified to this, that I wasn't involved
11:42:32 in the case till after the fact. I just wanted to test
11:42:34 his memory and see what he knows about it.

11:42:36 THE COURT: He says he has no memory what date
11:42:39 you were there.

11:42:40 **Q.** But you're certain I was there before the trials
11:42:42 ended.

11:42:42 MR. MOODY: Objection, Judge. We have been
11:42:43 through this now three or four times.

11:42:45 THE COURT: Sustained.

11:42:46 **Q.** I want to talk to you about when Attorney Fahey picked up the boxes of material. Do you remember you stated he didn't pick it up until it was I believe March of 1995, is that right?

11:43:09 **A.** I don't believe I said when he picked it up.

11:43:12 **Q.** Okay, do you know when he picked it up?

11:43:14 **A.** No, I don't.

11:43:14 **Q.** Do you have any writing or receipt when he picked it up?

11:43:17 **A.** I don't have any recollection.

11:43:19 **Q.** But you said that this meeting with him was very brief, correct, the first meeting in December?

11:43:26 **A.** The first, the first meeting, yes.

11:43:28 **Q.** Okay, so he didn't go through all the documents that time?

11:43:31 **A.** Not the amount that was there, no.

11:43:33 **Q.** Okay, and you didn't particularly point out any documents to him.

11:43:37 **A.** No.

11:43:37 **Q.** And when he did pick up the boxes, do you remember when that was?

11:43:44 **A.** No, I do not.

11:43:45 **Q.** Did you copy the materials in those boxes?

11:43:48 **A.** No, I did not.

11:43:49 **Q.** So you don't know what he picked up?

11:43:53 **A.** No.

11:43:53 **Q.** Correct?

11:43:53 **A.** Correct.

11:43:53 **Q.** And you didn't go through the boxes with him before
11:43:56 he picked the materials up, correct?

11:43:58 **A.** No, I did not.

11:43:59 **Q.** Now you kept leads even after the trial was
11:44:23 concluded, is that right?

11:44:25 **A.** Correct.

11:44:25 **Q.** Okay, and you came upon a lead do you remember
11:44:29 about -- from Tyler Hayes regarding Michael Bohrer, do you
11:44:35 remember that?

11:44:36 **A.** Not off the top of my head.

11:44:38 **Q.** Okay.

11:44:38 MS. BIANCO: May I have a moment, Your Honor?

11:44:43 THE COURT: Um hum.

11:44:59 MR. MOODY: That's in evidence.

11:45:00 MS. BIANCO: Twenty-one. I apologize, Judge.
11:45:02 They're not in order.

11:45:03 THE COURT: That's fine.

11:45:09 MS. BIANCO: If you want I can just grab
11:45:11 another twenty-one.

11:45:12 THE COURT: We agree that one's already in,
11:45:15 right?

11:45:16 MR. OAKES: Excuse me, Your Honor.

11:45:17 THE COURT: Twenty-one is already in, right?

11:45:19 MR. MOODY: Lead fifteen oh-four.

11:45:21 MR. OAKES: Yes, it is, Your Honor.

11:45:32 MS. BIANCO: Both of ours apparently are.

11:45:35 MS. PEEBLES: Mine's in evidence.

11:45:46 **Q.** Here's twenty-one. Do you remember in 2000
11:46:03 receiving a lead or filing a lead regarding a Tyler Hayes?
11:46:06 Showing you Defendant's Exhibit 21 please.

11:46:33 **A.** I don't remember this, no.

11:46:35 **Q.** So you've never seen that particular lead?

11:46:38 **A.** I didn't say that. I -- I filed it.

11:46:42 **Q.** Okay.

11:46:43 **A.** But I didn't take the lead, I didn't write the lead
11:46:46 and I didn't sign it.

11:46:47 **Q.** Okay, so you wouldn't have been in charge with who
11:46:50 followed up on that lead?

11:46:51 **A.** Correct.

11:46:52 MR. MOODY: Judge, I'm going to object.
11:46:54 What's the relevance of this line of questioning?

11:46:56 MS. BIANCO: He opened the door with Michael
11:46:58 Bohrer, Your Honor. They talked about Michael Bohrer,
11:47:00 his status in the investigation, how he got there.

11:47:03 MR. MOODY: My question was directed at the
11:47:05 time of the --

11:47:06 THE COURT: Plus he doesn't remember the sheet

11:47:08 any way so --
11:47:10 MS. PEEBLES: Excuse me. Also Tyler Hayes
11:47:12 testified, and we also offered it as Brady that was
11:47:15 never turned over to the defense in 2000. There's --
11:47:17 THE COURT: That's fine. He says he doesn't
11:47:19 remember it. It's done. On the lead sheet. He
11:47:22 doesn't remember the lead sheet.
11:47:24 **Q.** So you don't remember this lead coming in at all?
11:47:26 THE COURT: Asked and answered.
11:47:28 MS. BIANCO: Okay.
11:47:29 **Q.** Well, when Michael Bohrer -- you remember him when
11:47:33 he was coming forward during the course of the
11:47:35 investigation, correct?
11:47:36 **A.** I remember the name, yes.
11:47:38 **Q.** Well, were you aware that he was convicted of
11:47:42 kidnapping another girl in 1981?
11:47:45 MR. MOODY: Objection.
11:47:46 THE COURT: Sustained. Ms. Bianco, that's not
11:47:48 before the Court. Don't play games. Ask a question
11:47:52 before the Court.
11:48:07 **Q.** On direct examination, you testified that three or
11:48:15 four copies of the documents were being made, is that
11:48:20 right?
11:48:20 **A.** That's my -- my recollection is is that they were to
11:48:25 make three to four copies to be given over.

11:48:27 **Q.** Okay, but you didn't -- weren't part of making the copies, correct?

11:48:30 **A.** No, no.

11:48:32 **Q.** So you don't know if they were actually made, correct?

11:48:34 **A.** I don't know the exact number that were made, no.

11:48:37 **Q.** And you don't know if each of those leads were copied, correct?

11:48:41 **A.** Correct.

11:48:43 **Q.** You testified on direct examination that when the stuff was coming in, evidence was coming in to the New Haven center, that it was supposed to be logged in but a lot was not, correct?

11:49:07 **A.** Correct.

11:49:07 **Q.** And you're not aware of how much wasn't logged in, correct?

11:49:11 **A.** Correct.

11:49:12 **Q.** You testified on direct examination about a search being conducted throughout Oswego County, correct?

11:49:24 **A.** Correct.

11:49:25 **Q.** Are you aware of whether or not an area by Rice Road was searched at that time in -- during the investigation in 1994, are you aware whether that was done?

11:49:40 **A.** I would assume the whole county was.

11:49:43 **Q.** You assume, but is there any documentation that it

11:49:45 was?

11:49:45 **A.** I wasn't there. I couldn't tell you.

11:49:47 **Q.** So you don't know what was and what wasn't searched, 11:49:50 correct, because you weren't there?

11:49:51 **A.** Not physically, no.

11:49:52 **Q.** Well, did anyone tell you that Rice Road had been 11:49:56 searched?

11:49:57 **A.** I don't believe they ever -- I didn't ask and I 11:50:00 don't believe anybody told me.

11:50:01 MS. BIANCO: May I have a moment, Your Honor?

11:50:05 THE COURT: Sure.

11:50:05 (Whereupon, there was a pause in the 11:50:59 proceeding.)

11:50:59 MS. BIANCO: Exhibit 140.

11:51:21 **Q.** Investigator Whipple, are you aware of a lead that 11:51:26 came in to you on 6/23/95 by a Tim Lawton that stated 11:51:37 "Heidi Allen is a snitch" and was written on a bathroom 11:51:41 wall at the thruway on Junius Pond. Junius Pond thruway 11:51:47 stop. Do you remember that?

11:51:48 **A.** Not off the top of my head, no, not right now.

11:51:52 **Q.** Would anything you review refresh your recollection?

11:51:56 **A.** If I could see it, yeah.

11:51:57 **Q.** Showing you one-forty.

11:52:04 (Whereupon, there was a pause in the 11:52:17 proceeding.)

11:52:17 A. Okay, yes.

11:52:18 Q. Do you remember that lead coming in?

11:52:19 A. Yes, I do.

11:52:20 Q. Did you assign it a lead number?

11:52:24 A. Yes.

11:52:24 Q. Okay, did you assign anyone or did anyone follow up on that information regarding what was written on the wall there that she was a snitch?

11:52:34 A. No.

11:52:35 Q. And that was during the course of Gary Thibodeau's trial, correct?

11:52:40 MR. MOODY: Objection, Judge. I don't think she's established he knows when exactly Gary Thibodeau's trial ended.

11:52:47 THE COURT: Ask him when. Ask him.

11:52:50 Q. Were you following the trials to see what was going on?

11:52:53 A. Yes.

11:52:53 Q. Okay, so do you know that Gary Thibodeau's trial was in May and June of 1995?

11:53:01 A. I'm not certain of the months but --

11:53:03 Q. Did you attend some of the trial?

11:53:05 A. No. I wasn't allowed in.

11:53:06 Q. Okay, but you knew what was going on in the trial, correct?

11:53:09 A. I knew there was a trial going on.

11:53:11 Q. Was that document right there, was that turned over to the defense?

11:53:18 A. Well, this is dated June of ninety-five.

11:53:20 Q. Right. Was that turned over to the defense?

11:53:27 A. I don't see a mark on it.

11:53:29 Q. Okay, and when there's no mark, that would indicate to you that it wasn't turned over?

11:53:36 A. Well, this isn't the original so I couldn't tell.

11:53:41 Q. Okay, so are you saying that any document that was turned over to the defense would have to have a mark on it 'cause it would have to have been copied from the original, correct?

11:53:56 MR. MOODY: Objection, Judge. Which one is he saying has the mark on it? The question's very confusing. Is she talking about the copied one or the original?

11:54:04 THE COURT: Ask which -- which document would have the mark, the original or a copy.

11:54:06 Q. Which document would have the mark, the original or the copy?

11:54:09 A. The original.

11:54:10 Q. Okay, do you know whether that particular document was turned over to the defense?

11:54:14 A. I have no idea.

11:54:15 **Q.** Okay, and you don't know whether anyone followed up on this information or tried to collect evidence as to who might have wrote this. You don't know?

11:54:29 **A.** No.

11:54:30 **Q.** And is this four-sixteen on the corner, would that be the lead?

11:54:42 **A.** I believe so, yes.

11:54:43 **Q.** Okay, so this document regarding someone reporting "Heidi Allen is a snitch" on the bathroom wall received the lead, correct?

11:54:53 **A.** I believe it should be. Usually I put the lead numbers over in the right-hand corner. I don't know on there.

11:55:00 **Q.** But the document, the actual Heidi Allen confidential informant documents, did not have a lead number on it, correct?

11:55:07 MR. MOODY: Objection, Judge. We have been through this about six times now.

11:55:11 THE COURT: Sustained.

11:55:12 MS. BIANCO: No further questions.

11:55:13 THE COURT: Okay, we're going to recess until quarter after one.

11:55:24 (Whereupon, there was a recess.)

01:10:42 THE COURT: We ready?

01:10:42 MS. BIANCO: Judge, I neglected to offer

01:10:45 Exhibit 140 which was lead sheet four-sixteen taken by
01:10:51 Whipple. This is about the "Heidi is a snitch" on the
01:10:54 bathroom wall. It's my understanding that the
01:10:56 prosecution does not object.

01:10:57 THE COURT: Any objection?

01:10:59 MR. MOODY: I have no objection.

(Defendant's Exhibit No. 140 was received in evidence).

01:11:01 MR. MOODY: But I also -- she misspoke when
01:11:02 she said the trial was going on. I think she's willing
01:11:04 to stipulate that by then, the twenty-third, the trial
01:11:06 was over. It ended on the nineteenth.

01:11:09 MS. PEEBLES: Yes, stipulate.

01:11:09 THE COURT: So you agree Gary's trial was over
01:11:11 on 6/19?

01:11:12 MS. PEEBLES: Yes. Actually it was the
01:11:14 nineteenth. You rested on the ninth, or the eighth, or
01:11:17 sixth, early in June.

01:11:19 MR. MOODY: I have got the trial transcript
01:11:22 here. It ends on the nineteenth.

01:11:26 THE COURT: We don't care the exact date the
01:11:28 trial ended, just the trial was done by June
01:11:31 twenty-third. Do you want to get Mr. Whipple back in,
01:11:34 Investigator Whipple.

(Whereupon, there was a pause in the

01:12:07 proceeding).

01:12:07 THE COURT: Mr. Whipple, consider the fact
01:12:13 that you're still under oath, okay, sir?

01:12:14 THE WITNESS: Yes, sir.

01:12:18 REDIRECT EXAMINATION

01:12:18 BY MR. MOODY:

01:12:19 **Q.** Investigator Whipple, you were asked some questions
01:13:01 about the first time that now Judge Fahey came to visit and
01:13:12 view the file. Do you remember those questions, you were
01:13:15 asked some questions?

01:13:15 **A.** Yes, basically.

01:13:16 **Q.** And I want to show you what's been marked as
01:13:19 People's Exhibit III. I believe you said you couldn't
01:13:22 remember the exact date. If I were to show you that, does
01:13:25 that refresh your recollection as to what date he showed
01:13:27 up?

01:13:36 **A.** December fourteenth of 1994.

01:13:41 **Q.** Okay, thank you. Now you were asked some questions
01:13:47 about Heidi Allen's status, about whether she was working
01:13:54 with or a confidential informant for the Sheriff's
01:13:59 Department. Do you remember those questions?

01:14:01 **A.** Yes.

01:14:01 **Q.** You mentioned that you were not aware of the
01:14:05 paperwork that -- or you didn't know that the paperwork was
01:14:09 in your possession, in the Sheriff's Department possession,

01:14:13 it was in 11-A.

01:14:14 MS. BIANCO: Objection to the leading nature
01:14:16 of these question, Judge.

01:14:17 THE COURT: It's foundation. I'll allow it.

01:14:19 **Q.** You were aware prior to May that at some point in
01:14:24 time that she had spoken with members of the Sheriff's
01:14:30 Department?

01:14:30 MS. BIANCO: Objection. Leading, Judge.

01:14:32 THE COURT: I'm going to allow it.

01:14:33 **Q.** Were you aware before May of 1995 that she had
01:14:36 spoken with members of the Sheriff's Department?

01:14:38 **A.** Before May of ninety-five?

01:14:40 **Q.** Yes.

01:14:40 **A.** Yes.

01:14:41 **Q.** And I want to show you --

01:14:44 MR. MOODY: If I can get these marked.

01:15:20 (People's Exhibit NNN was marked for
01:15:21 identification).

01:15:22 **Q.** Show you what's been marked as People's Exhibit NNN
01:15:25 and ask you if you recognize that from the documents in
01:15:28 there, and if you need me to open it I can for you,
01:15:37 investigator.

01:15:40 **A.** Yeah. I recognize it as our evidence tag from the
01:15:45 department, stuff like that. I don't know -- I mean it
01:15:48 wasn't a report that I generated.

01:15:50 **Q.** Okay, I want to show you if I can, I'm going to open
01:15:53 Exhibit N, NNN, excuse me, have you take a look at the
01:16:10 contents of Exhibit N and see if you recognize those.
01:16:17 (Whereupon, there was a pause in the
01:16:40 proceeding.)
01:16:40 **A.** Vaguely I remember the report, yes.
01:16:42 **Q.** Okay, and does Exhibit NNN, does that -- does that
01:16:48 contain any date stamps on those pages?
01:16:50 **A.** December ninth of 1994.
01:16:52 **Q.** Is that just on one page or more than one?
01:16:56 **A.** No, it's on both pages.
01:16:59 **Q.** There are actually three pages to this document.
01:17:05 **A.** Oh, I'm sorry. Yes. On the third page also.
01:17:08 **Q.** When you say you vaguely recollect these documents,
01:17:13 when you -- would they have been in your -- in the file to
01:17:15 your knowledge?
01:17:16 **A.** Yes.
01:17:16 **Q.** And do they contain the green mark on them?
01:17:25 **A.** Yes.
01:17:30 **Q.** On every page?
01:17:31 **A.** On every page.
01:17:43 MR. MOODY: Judge, showing, excuse me,
01:17:44 Exhibit NNN to defense counsel, I'd move to admit.
01:17:54 MS. BIANCO: Judge, we would object. The
01:17:57 green marker doesn't say who they went, when they went

01:18:01 to somebody, and on top of that, these documents are
01:18:04 already in evidence. Object to the relevance.

01:18:07 THE COURT: What are -- they're in under what
01:18:10 exhibit already?

01:18:11 MS. PEEBLES: Eight, nine and ten.

01:18:13 MR. MOODY: Well, it's -- the green mark is
01:18:15 the issue, Judge, obviously is what they were turned
01:18:18 over.

01:18:18 THE COURT: The green mark indicates they were
01:18:21 photocopied, right?

01:18:21 MR. MOODY: Yes.

01:18:22 THE COURT: Does it indicate when they were
01:18:23 turned over, who they were turned over to?

01:18:25 MR. MOODY: Not directly on those documents,
01:18:27 no.

01:18:27 THE COURT: Based on that?

01:18:28 MS. BIANCO: Still object, Judge. It's not
01:18:30 relevant because they don't fit in. He agreed that
01:18:33 they don't say who they went to and when they went to
01:18:36 them.

01:18:36 THE COURT: Right. This witness said he did
01:18:38 not know who the exhibits would go to, who the
01:18:40 photocopies would go to, who made the photocopies, the
01:18:43 green, so this witness is only that they were
01:18:44 photocopied.

01:18:46 MS. BIANCO: Sure. No objection.

01:18:47 THE COURT: Okay.

01:18:48 MS. PEEBLES: Yes, object.

01:18:49 MS. BIANCO: I'm sorry, Judge.

01:18:51 MS. PEEBLES: We object, Judge.

01:18:53 THE COURT: On what basis? I'm going to allow
01:18:54 it in, just the green marks on it. I'm going to limit
01:18:57 it for review to the green marks only, that it was
01:19:03 copied.

(People's Exhibit NNN was received in
01:19:03 evidence).

01:19:03 **Q.** And these were date stamped on what date?

01:19:07 **A.** December ninth of 1994.

01:19:11 **Q.** So --

01:19:12 **A.** That's the Sheriff's Department date stamp.

01:19:16 **Q.** And would that indicate that they were -- they were
01:19:18 then put in the file on December ninth of 1994?

01:19:22 **A.** Yes, sir.

01:19:23 **Q.** And on December fourteenth when Mr. Fahey came to
01:19:42 view, was he given complete access to the entire file on
01:19:45 December fourteenth?

01:19:45 **A.** Yes, sir.

01:19:46 **Q.** Now --

01:20:29 (People's Exhibit OOO was marked for
01:20:31 identification).

01:20:42 **Q.** At the time that the Heidi Allen investigation was ongoing, or excuse me, started, how much of the report system for the Oswego County Sheriff's Department was computerized if you know?

01:21:00 **A.** Not that much. We had an internal system they called a Chief system.

01:21:06 MS. BIANCO: Objection. Outside the scope of cross-examination, Judge.

01:21:10 MR. MOODY: I'll tie it up in a minute, Judge, if I can have just a little bit of latitude.

01:21:15 THE COURT: Give you a little latitude. Tie it up quickly.

01:21:18 **Q.** Was there to your knowledge a Chief's report done with regard to at least some portion of the Heidi Allen investigation?

01:21:26 **A.** I believe so, but I'm not absolutely certain.

01:21:29 **Q.** I want to show you what's been marked as People's Exhibit 000.

01:21:38 (Whereupon, there was a pause in the proceeding.)

01:21:45 **A.** Okay, yep.

01:21:46 **Q.** Do you recognize that document?

01:21:47 **A.** Yes, I do.

01:21:48 **Q.** And what is that?

01:21:49 **A.** That's a Chief's, what we call the Chief system that

01:21:53 was our crime management system.

01:21:55 **Q.** Okay, was that related -- is that the Chief's report
01:21:58 for this, for Heidi Allen's abduction?

01:22:01 **A.** Yes, it is.

01:22:02 **Q.** Showing you now the actual contents of 000, how many
01:22:35 pages is that document?

01:22:48 **A.** Ten pages.

01:22:49 **Q.** And do each of those pages contain the green mark?

01:22:55 MS. BIANCO: Your Honor, I'm going to object.
01:22:57 This is way beyond the scope of cross-examination.

01:22:59 THE COURT: How are you tying this back in? I
01:23:02 need to know.

01:23:03 MR. MOODY: Judge, this is the report that
01:23:05 indicates that -- that has Roy Lortie's report at the
01:23:08 end of it. It indicates that she -- she was at some
01:23:10 point a confidential informant.

01:23:12 THE COURT: Do we have the Lortie report
01:23:13 already in?

01:23:14 MS. PEEBLES: It's in evidence, Judge.

01:23:16 MR. MOODY: But -- and that's part of the --
01:23:17 again, Judge, we get back to the idea that this has a
01:23:20 green mark that shows it was copied which was their --
01:23:22 at their time their way of insuring that these things
01:23:25 were turned over to defense.

01:23:25 THE COURT: A limited purpose saying it was

01:23:28 copied?

01:23:28 MR. MOODY: Yes.

01:23:29 THE COURT: I'll allow it for that limited
01:23:31 purpose.

(People's Exhibit 000 was received in
01:23:35 evidence).

01:23:35 **Q.** Now, I'll turn now the one that's in for the entire
01:23:41 purpose, but showing you what's been marked as Defendant's
01:23:46 Exhibit 5, can you look at it? Is that a duplicate of the
01:23:54 document I just showed you, 000?

01:24:00 **A.** It appears to be. It's ten pages.

01:24:02 **Q.** And is -- is there --

01:24:03 THE COURT: What exhibit is that?

01:24:06 MR. MOODY: That is Exhibit 5, Defendant's
01:24:08 Exhibit 5.

01:24:09 **Q.** And is there mention on page nine and ten of that
01:24:11 document of Heidi Allen's status as a confidential
01:24:18 informant?

01:24:36 (Whereupon, there was a pause in the
01:24:55 proceeding.)

01:24:55 **A.** I don't see anything on page nine. I do on page
01:25:01 ten.

01:25:01 **Q.** Okay, and -- and at the bottom of page nine, is
01:25:05 there a new narrative begun by a different officer?

01:25:09 MS. BIANCO: Objection. He's leading the

01:25:11 witness, Your Honor.

01:25:11 THE COURT: Plus the document speaks for
01:25:12 itself, Mr. Moody.

01:25:15 MR. MOODY: Correct, Judge. I'll withdraw the
01:25:16 question.

01:25:16 THE COURT: Thank you.

01:25:29 **Q.** Now at the -- you were asked some questions about
01:25:38 some kind of security measure breach at the -- in the
01:25:44 situation room. Do you remember those questions?

01:25:46 **A.** Yes.

01:25:46 **Q.** Okay, and they showed you Defendant's Exhibit 156.
01:25:56 Do you remember that?

01:25:57 **A.** Yes.

01:25:58 **Q.** And to your recollection, was that the only time
01:26:04 that there was any problem with the security in the -- in
01:26:09 the situation room?

01:26:11 **A.** I believe so 'cause I -- I felt that I made enough
01:26:14 of a stink over it that I got my point across.

01:26:18 **Q.** And with regard to the open file that related to
01:26:23 Kristine Duell?

01:26:25 **A.** Yes.

01:26:26 **Q.** Okay, and at the time that you were responsible for
01:26:40 the paperwork back in ninety-four and ninety-five, you
01:26:44 testified that you were unaware of who had found the card
01:26:47 at the D & W, was that accurate?

01:26:50 **A.** Who had found the card at the store?

01:26:52 **Q.** Yes, the -- the --

01:26:54 **A.** Yeah. I -- I have no idea who found that.

01:26:56 **Q.** And you were asked some questions -- you were asked 01:27:17 some questions about Defendant's Exhibit 144. Do you 01:27:23 recognize that?

01:27:32 **A.** I recognize it as a Sheriff's Department complaint 01:27:35 card, punch card, yes.

01:27:36 **Q.** And the punch cards, do they -- the punch gives them 01:27:39 what kind of information when you say they're punched?

01:27:43 **A.** Well, it gave you the complaint number, it will give 01:27:45 you the time it was received, the time it was dispatched, 01:27:48 the time the officer arrived and the complaint number when 01:27:52 he completed the or the time that he completed the 01:27:56 complaint.

01:27:56 **Q.** Would that time also include the date?

01:27:58 **A.** Yes, it would.

01:27:59 **Q.** And what -- what is the date on that punch card?

01:28:01 **A.** Looks like January of 1992, January twenty-third of 01:28:10 1992.

01:28:10 **Q.** Okay, and how -- in relation to when Heidi Allen 01:28:14 went -- disappeared, how many -- how long before or after 01:28:17 is that?

01:28:18 **A.** A little over two years.

01:28:19 **Q.** A little over two years. You were asked some

01:28:53 questions about Exhibit 140 which has been admitted which is I think this is cut off, but that's the lead that you were asked about that came in on June twenty-third of 1995.

01:29:07 **A.** Correct.

01:29:07 **Q.** You took that call?

01:29:10 **A.** Yes.

01:29:11 **Q.** And you said that there was no followup done?

01:29:15 **A.** No.

01:29:15 **Q.** Why not?

01:29:16 **A.** Well, what we would do in a case like this is we would discuss it in our morning meetings and we felt --

01:29:23 MS. BIANCO: I'm going to object what he would do in a case like this. What did he do in this case.

01:29:27 THE COURT: Okay, ask him a question about this particular case.

01:29:31 **Q.** What was done to your recollection with regard to this?

01:29:34 **A.** It was brought up at one of our morning meetings and discussed.

01:29:39 **Q.** To your knowledge, had there been press reports at that point in time about Heidi Allen being a confidential informant for the Sheriff's Department?

01:29:48 **A.** Not that I was aware of.

01:29:50 **Q.** Had there been other information that -- that -- well, let me ask it to you this way. I'll withdraw that

01:29:58 question. Do you know where the Junius Pond thruway stop
01:30:03 is?

01:30:05 A. Yes, I do.

01:30:05 Q. And where is it in location -- in relation to Oswego
01:30:08 County?

01:30:08 A. I'm not certain if it's in Cayuga County or Wayne
01:30:14 County.

01:30:14 Q. So that would be west of here?

01:30:15 A. To the west of here, yes.

01:30:17 Q. And to your knowledge, had there been any
01:30:22 discussions or -- or discussions in the public at all or
01:30:26 had you heard any people discussing Heidi Allen's status as
01:30:29 a confidential informant?

01:30:30 MS. BIANCO: Objection to the leading nature
01:30:32 of these questions, Judge.

01:30:33 THE COURT: Mr. Moody, try to make it a little
01:30:36 less leading please.

01:30:37 MR. MOODY: I'll withdraw that question.

01:30:39 THE COURT: Thank you.

01:30:40 Q. You were asked some questions about whether Rice
01:30:44 Road was searched. Do you remember those?

01:30:46 A. Yeah, I believe so.

01:30:47 Q. Do you know where Rice Road is located?

01:30:50 A. I believe it's either in the Town of Mexico or Town
01:30:54 of Parish.

01:30:54 **Q.** And do you remember seeing a map about where that -- that -- of the locations that had been searched back in ninety-four?

01:31:04 **A.** Yes.

01:31:05 **Q.** And were all of Mexico and all of Parish marked off as having been searched?

01:31:10 MS. BIANCO: Judge, again, leading.

01:31:12 THE COURT: Mr. Moody, leading. Sustained.

01:31:13 **Q.** Do you remember what it said about whether -- whether -- what it said about Mexico and Parish on that map, what it indicated actually more precisely.

01:31:24 **A.** I remember that the townships had been crossed off.

01:31:27 **Q.** Indicating what?

01:31:28 **A.** That they had been searched.

01:31:33 **Q.** With regard to the security breach that took place at some point in August of 1994, that was inside the Sheriff's Department, correct?

01:31:57 **A.** Correct.

01:31:58 **Q.** Would any members of the general public been able to get in there without the Sheriff's Department's knowledge?

01:32:04 **A.** No.

01:32:04 **Q.** After the file was moved up to the Oswego County District Attorney's Office, who was still responsible for it?

01:33:06 **A.** I was.

01:33:08 **Q.** And did you take steps to make sure that there was security in place for that file?

01:33:14 **A.** Yes, I did.

01:33:15 **Q.** You mentioned that the investigation was continuing and you were still gathering documents even after both defendants were indicted?

01:33:32 **A.** Correct.

01:33:32 **Q.** How -- and the process for those documents that were still being created, how were those transferred to the file that was in the District Attorney's Office?

01:33:42 **A.** The -- I would take, make copies of them, and I would take them up, and I would give them to the assistant district attorney.

01:33:52 **Q.** Which would have been?

01:33:54 **A.** Donald Dodd.

01:33:55 **Q.** And after the trials were over, what happened to the file?

01:33:59 **A.** The file -- I moved the file after everything was done and over with because I was assigned to evidence for the department, I had a facility within the building that was secure and locked and that only I had access to and I stored that file in that secure area.

01:34:21 MR. MOODY: I have no further questions.

01:34:22 THE COURT: Ms. Bianco, just give me a second please.

01:34:26 MS. PEEBLES: We need a minute too, Judge.

01:34:28 THE COURT: Okay.

01:34:28 (Whereupon, there was a pause in the
01:35:06 proceeding.)

01:35:06 THE COURT: Whenever you're ready, Ms. Bianco

01:35:09 MS. BIANCO: If you give me one minute.

01:35:11 THE COURT: Sure.

01:35:13 (Whereupon, there was a pause in the
01:35:14 proceeding).

01:35:21 MS. BIANCO: Your Honor, may I have a moment
01:35:33 just to gather some of the evidence?

01:35:35 THE COURT: Absolutely.

01:36:19 MS. BIANCO: Mark, the LLL I think you were
01:36:21 referring to, do you have that over there?

01:36:23 MR. MOODY: I'm sorry?

01:36:26 MS. BIANCO: LLL, the one you were just
01:36:27 referring to a minute ago. Do you have it at your
01:36:30 desk?

01:36:31 MR. MOODY: I don't think so.

01:36:36 MS. BIANCO: Oh, NNN.

RECROSS-EXAMINATION

01:36:44 BY MS. BIANCO:

01:36:44 **Q.** Investigator Whipple, during the break did you have
01:37:18 an opportunity to discuss your testimony with either of the
01:37:23 prosecutors?

01:37:24 **A.** No.

01:37:25 **Q.** You didn't talk to them at all?

01:37:26 **A.** No.

01:37:26 **Q.** Did you talk to anyone from the Sheriff's Department over the break?

01:37:30 **A.** I talked with some members of the Sheriff's Department, yeah, but not about the case.

01:37:34 **Q.** Nothing about the case.

01:37:35 **A.** No.

01:37:36 **Q.** Okay. Now, showing you Defendant's 8, 9 and 10 which Mr. Moody showed you on redirect examination, those are the documents you said you vaguely remembered, is that correct?

01:38:05 THE COURT: He didn't show eight, nine and ten. He showed his own numbered document.

01:38:10 MS. BIANCO: Oh, I'm sorry, that he showed, NNN.

01:38:13 THE COURT: Yes, yes.

01:38:14 MS. BIANCO: I can show him NNN.

01:38:16 THE COURT: Because he didn't show him eight, nine and ten.

01:38:18 **Q.** I'll show you NNN. Same documents, just a different letter on there.

01:38:36 (Whereupon, there was a pause in the proceeding.)

01:38:46 **Q.** Do you remember seeing those documents?

01:38:48 **A.** I'm -- vaguely I remember the documents, yes.

01:38:50 **Q.** Okay, could you tell me where on those documents are
01:38:55 the lead numbers that were assigned to them?

01:39:02 **A.** There aren't any on this one.

01:39:05 **Q.** So there was no lead, those are the ones that have
01:39:08 the green marks on them, is that right?

01:39:09 **A.** Yes.

01:39:10 **Q.** And there was no lead numbers assigned to any of
01:39:12 those documents in NNN in your hands, correct?

01:39:16 **A.** Not on these three pages they weren't, no.

01:39:19 **Q.** Okay, and didn't you testify on cross-examination
01:39:23 that you didn't recall any of Heidi Allen's confidential
01:39:27 informant information that was dropped in the parking lot
01:39:31 until May of 1995, wasn't that your testimony?

01:39:36 **A.** Yeah, right.

01:39:37 **Q.** That was your testimony?

01:39:38 **A.** (Nods.)

01:39:39 **Q.** I'm sorry, you have to answer for the record, sir,
01:39:42 I'm sorry.

01:39:42 **A.** Yes.

01:39:43 **Q.** So you have no specific recollection of those
01:39:47 documents being in the file at the Oswego County Sheriff's
01:39:53 Department before May of 1995, correct?

01:39:56 **A.** Well, I would have to say that they were there at

01:40:04 least by December ninth of 1994.

01:40:07 **Q.** I'm asking you do you have any recollection, 01:40:11 specific recollection of those three documents being in the 01:40:13 Sheriff's Department, the original file, before May of 01:40:18 1995, do you have a specific recollection?

01:40:20 **A.** I would have to say yes.

01:40:21 **Q.** You have a specific recollection?

01:40:23 **A.** Well, I would have to because of the date stamp.

01:40:25 **Q.** Okay, and the date stamp, there's no date stamp that 01:40:28 they went to the District Attorney's Office is there?

01:40:30 **A.** Not on this, no.

01:40:32 **Q.** Okay, not on any of those three documents, correct?

01:40:36 **A.** No. These are all Sheriff's Department date stamps.

01:40:42 **Q.** Okay, and you were the one in charge of the file, 01:40:44 correct?

01:40:45 **A.** Correct.

01:40:45 **Q.** And is the only reason you recall or you're saying 01:40:48 you have a specific recollection that they actually got to 01:40:51 the file is because of those date stamps?

01:40:54 **A.** Yes, that and the green mark.

01:40:56 **Q.** And the green mark, correct.

01:40:59 **A.** Right.

01:40:59 **Q.** And documents like those that have no particular 01:41:07 lead number, where would you put them?

01:41:11 **A.** Well, usually if it -- I make references on them as

01:41:16 to where they should be filed if I was the one that filed
01:41:19 them.

01:41:19 **Q.** And there's no reference to that in those documents,
01:41:22 is that right?

01:41:22 **A.** Right, but then again, I don't know that I filed
01:41:24 this.

01:41:25 **Q.** You don't know that you filed them with the -- with
01:41:28 the original Sheriff's Department file, is that right?

01:41:31 **A.** This particular document, right.

01:41:32 **Q.** Okay, and you don't know if those particular
01:41:35 documents with the green marks, you were filing with the
01:41:39 District Attorney's Office too, you were keeping track of
01:41:42 their files, yes?

01:41:43 **A.** No. My file was the only file I was keeping track
01:41:46 of.

01:41:46 **Q.** And that file went to the District Attorney's
01:41:48 Office?

01:41:48 **A.** Correct.

01:41:49 **Q.** And that's what you were keeping, that file, at the
01:41:52 District Attorney's Office, correct?

01:41:53 **A.** Right. My file I was keeping.

01:41:55 **Q.** And you don't have any recollection where those
01:41:58 documents were filed in the district attorney's file which
01:42:01 was your file too, correct?

01:42:02 **A.** Right 'cause I don't -- I probably did not file this

01:42:06 particular report.

01:42:07 **Q.** Okay, thank you. You were asked some questions
01:42:16 about the internal report, Defendant's Exhibit 156
01:42:23 regarding the breach. Do you remember those questions?

01:42:26 **A.** Yeah. I remember that you asked questions about the
01:42:29 breach, yes.

01:42:29 **Q.** And when I initially asked you the question, you
01:42:33 didn't remember that there was in fact a breach, is that
01:42:36 right?

01:42:36 **A.** Correct.

01:42:36 **Q.** And then on Mr. Moody's cross-examination, not only
01:42:40 did you remember there was a breach, but you also
01:42:43 remembered there was a discussion about the breach, is that
01:42:46 right?

01:42:46 MR. MOODY: Objection, Judge.

01:42:47 THE COURT: For one thing, he admitted to
01:42:50 that, but he admitted that he didn't remember the
01:42:53 breach. Sustained.

01:42:54 **Q.** Well, you made quite a big deal I believe about the
01:42:57 breach.

01:42:58 MR. MOODY: Objection "quite a big deal."

01:43:00 THE COURT: Why don't you ask him what you
01:43:02 think he specifically answered, Ms. Bianco.

01:43:04 **Q.** You thought this breach was significant enough that
01:43:06 you had to write a memo, correct?

01:43:08 **A.** Correct.

01:43:10 **Q.** But did you follow up on who opened the Kristine
01:43:12 Duell file and what if anything was taken?

01:43:16 **A.** The only thing it referenced to the open file is --
01:43:19 I mean I didn't mark it down there, the only other person
01:43:23 who would have access to those files when I wasn't there
01:43:27 was Deputy Cromie.

01:43:29 **Q.** So he's the one that did the breach?

01:43:31 **A.** No.

01:43:31 **Q.** Okay.

01:43:32 **A.** But he may have been the one that opened the file.
01:43:34 We don't know.

01:43:35 **Q.** But you didn't do a followup investigation as to who
01:43:39 opened the file and what if anything was taken did you?

01:43:42 **A.** No.

01:43:42 MS. BIANCO: I'd offer Defendant's Exhibit 56.

01:43:48 MR. MOODY: Judge --

01:43:50 THE COURT: What's it being offered for?

01:43:52 MS. BIANCO: Well, Judge, there is a breach,
01:43:54 documents were missing, and no followup was done. He
01:43:57 wrote this memo. I think it's relevant as to what was
01:43:59 taken and what they did about it.

01:44:01 THE COURT: Mr. Moody?

01:44:03 MR. MOODY: Judge, I don't necessarily have a
01:44:06 problem with the admission of it if the -- if they're

01:44:09 also willing to stipulate that it was turned over to
01:44:12 defense back in ninety-four, ninety-five.

01:44:13 THE COURT: Ms. Bianco?

01:44:14 MS. BIANCO: No, Judge, we certainly aren't
01:44:16 willing to stipulate about -- about the breach in
01:44:19 August twelfth of --

01:44:21 MR. MOODY: No, the document.

01:44:22 MS. BIANCO: This document?

01:44:23 MR. MOODY: Was turned over to you guys.

01:44:26 MS. BIANCO: Yes. We'll stipulate that this
01:44:27 document was turned over.

01:44:28 THE COURT: 156 is in with that stipulation.

(Defendant's Exhibit No. 156 was received in
01:44:35 evidence).

01:44:35 **Q.** And you'll agree, Investigator Whipple, that
01:44:38 Defendant's Exhibit 156 nowhere mentions anything about
01:44:41 Heidi Allen being a confidential informant does it?

01:44:47 MR. MOODY: Objection, Judge. I think the
01:44:49 document speaks for itself.

01:44:50 THE COURT: Sustained. Don't answer the
01:44:52 question. Actually can I have that document back?
01:44:55 Thank you.

01:45:00 **Q.** Showing you Defendant's Exhibit 144, the punch card
01:45:06 in question, when it says "property found," do you see
01:45:15 where it says that?

01:45:19 **A.** Yeah. In the narrative you're saying?

01:45:20 **Q.** Yes.

01:45:21 **A.** Yes.

01:45:21 **Q.** It doesn't state what property was found does it?

01:45:25 **A.** No.

01:45:36 **Q.** It doesn't say anything about Heidi Allen on that
01:45:39 punch card does it?

01:45:41 **A.** No, it doesn't.

01:45:46 MS. BIANCO: May I have a moment, Your Honor?

01:45:48 THE COURT: Sure.

01:45:49 (Whereupon, there was a pause in the
01:45:52 proceeding.)

01:45:52 MS. BIANCO: No further questions. Thank you,
01:45:53 sir.

01:45:53 THE COURT: Mr. Moody?

01:46:00 MS. BIANCO: I believe this is -- this is your
01:46:05 NNN.

01:46:09 THE COURT: NNN.

01:46:18 REDIRECT EXAMINATION

01:46:18 BY MR. MOODY:

01:46:20 **Q.** Lieutenant Whipple, you were asked about NNN and you
01:46:35 said that you might not have filed it with the -- in the
01:46:38 file. Do you know who else might have?

01:46:42 MS. BIANCO: Objection to who else might have.
01:46:44 It's pure speculation.

01:46:45 THE COURT: Lay some foundation.

01:46:48 **Q.** Who else was responsible for filing documents
01:46:50 besides yourself?

01:46:51 **A.** Deputy Cromie.

01:47:00 **Q.** And when you say then you didn't file it, is it
01:47:04 possible then that --

01:47:05 MS. BIANCO: Objection to what's possible.

01:47:06 THE COURT: He hasn't finished his question
01:47:09 yet, Ms. Bianco. Let him ask the question first. Go
01:47:14 ahead, Mr. Moody.

01:47:15 **Q.** If you weren't around to put something in the file,
01:47:18 would Deputy Cromie have stamped it and filed it?

01:47:21 **A.** Yes, sir.

01:47:22 MS. BIANCO: Objection, Judge. Speculative.

01:47:23 THE COURT: Foundation laid the only other
01:47:25 person who did it was Cromie.

01:47:27 MR. MOODY: No further questions, Judge.

01:47:30 THE COURT: Ms. Bianco?

01:47:35 MS. BIANCO: May I have have a moment, Your
01:47:36 Honor?

01:47:36 THE COURT: Sure.

01:47:37 (Whereupon, there was a pause in the
01:47:38 proceeding.)

01:47:38 MS. BIANCO: No, no further questions.

01:47:40 THE COURT: Is he subject to recall or can he

01:47:43 go?

01:47:44 MR. MOODY: He can go.

01:47:45 THE COURT: Investigator, you're all set.
01:47:46 Thank you.

01:47:47 THE WITNESS: Thank you.

01:47:47 THE COURT: Court needs two minutes to call
01:47:49 its office. I'll be right back.

01:47:51 (Whereupon, there was a pause in the
01:50:36 proceeding.)

01:50:36 THE CLERK: Raise your right hand.

LAURA KNIGHT, Called as a witness, having been
01:50:41 duly sworn, was examined and testified as follows:

01:50:41 THE CLERK: Please state your name for the
01:50:47 record.

01:50:47 THE WITNESS: Dr. Laura Knight.

01:50:49 THE CLERK: Spell your first name.

01:50:50 THE WITNESS: L-A-U-R-A.

01:50:54 THE CLERK: And spell your last name.

01:50:54 THE WITNESS: K-N-I-G-H-T.

01:50:56 THE COURT: Dr. Knight, before we start I'm
01:50:57 going to ask you if you mind or if you consent to
01:51:00 having your testimony audio and videotaped.

01:51:04 THE WITNESS: I don't mind.

01:51:06 THE COURT: You don't mind. Is that a consent
01:51:09 then?

01:51:09 THE WITNESS: It is.

01:51:12 DIRECT EXAMINATION

01:51:13 BY MR. OAKES:

01:51:14 Q. Good afternoon, Dr. Knight.

01:51:19 A. Good afternoon.

01:51:20 Q. Can you please state your name for the record?

01:51:22 A. Dr. Laura Knight.

01:51:23 Q. Where are you employed?

01:51:24 A. At the Onondaga County Medical Examiner's Office.

01:51:27 Q. What is your position with the Onondaga County
01:51:30 Medical Examiner's Office?

01:51:31 A. I'm the deputy chief medical examiner.

01:51:34 Q. And how long have you held that position?

01:51:36 A. I've held the position of deputy chief since May of
01:51:40 2013.

01:51:40 Q. And prior to May of 2013 were you employed in your
01:51:44 current field?

01:51:45 A. Yes. I was also employed as a medical examiner at
01:51:48 the Onondaga County Medical Examiner's Office since 2009.

01:51:52 Q. And can you briefly describe -- well, we're -- we
01:51:58 don't have a jury. Prior to 2009 were you employed as a
01:52:02 medical examiner?

01:52:03 A. Yes.

01:52:04 Q. Where was that?

01:52:05 A. I was employed as a deputy medical examiner in

01:52:07 Kansas City, Missouri at the Jackson County Medical
01:52:12 Examiner's Office.

01:52:12 **Q.** And from what period of time was that?

01:52:14 **A.** That was from about 2007 to 2009.

01:52:17 **Q.** Doctor, can you briefly describe your education,
01:52:21 your medical training to the Court please?

01:52:22 **A.** Yes. I have a Bachelor of chemistry degree from
01:52:28 Murray State University in the area of chemistry.
01:52:30 Following that I graduated and went to medical school at
01:52:34 the University of Louisville School of Medicine and
01:52:37 graduated from there in 2001. Following medical school and
01:52:41 the attainment of my MD degree, I then went on to do
01:52:44 residency training in anatomic and clinical pathology at
01:52:49 the Medical University of South Carolina in Charleston,
01:52:52 South Carolina. I then completed a one-year fellowship in
01:52:55 forensic pathology at the Office of the Medical
01:52:57 Investigator in Albuquerque, New Mexico, and following
01:53:02 that, I completed my board certification examinations in
01:53:05 anatomic clinical and forensic pathology.

01:53:09 **Q.** And doctor, are you board certified in those three
01:53:12 areas?

01:53:12 **A.** Yes. I am board certified by the American Board of
01:53:16 Pathology.

01:53:16 **Q.** And were you certified in the same year for each of
01:53:19 those areas or different years?

01:53:20 **A.** I was certified in 2007 for all three.
01:53:25 **Q.** And have you been continuously certified in those
01:53:28 three areas since that time?
01:53:29 **A.** Yes.
01:53:30 **Q.** And doctor, can you briefly describe your duties as
01:53:35 a medical examiner?
01:53:36 **A.** As a medical examiner my primary duties are to
01:53:40 determine the cause and manner of death in suspicious or
01:53:43 unexpected deaths. I also have some administrative duties
01:53:47 as a deputy chief.
01:53:49 **Q.** Now, is your work confined strictly to the Medical
01:53:55 Examiner's Office, that building in Syracuse, or do you go
01:53:56 out and do field work sometimes?
01:53:57 **A.** No, my work is not confined to the office. I
01:54:00 sometimes go to crime scenes or scenes of death. I also am
01:54:04 sometimes asked to look at sites where potential human
01:54:08 remains may be located.
01:54:09 **Q.** And it's in that area that I wanted to focus,
01:54:11 doctor. I'm going to direct your attention to Tuesday,
01:54:14 July twenty-ninth of 2014. Were you working on that day?
01:54:17 **A.** Yes.
01:54:18 **Q.** And were you working on a particular case on that
01:54:22 day?
01:54:23 **A.** Yes. On Tuesday that you described I was working at
01:54:26 the Medical Examiner's Office and was asked to go to a site

01:54:29 on Rice Road to look for some possible human remains.
01:54:33 **Q.** And that area on Rice Road, that's in the Town of
01:54:38 Mexico here in Oswego County?
01:54:39 **A.** To the best of my knowledge, yes.
01:54:40 **Q.** And was it just yourself who went with the Medical
01:54:47 Examiner's Office or were there others?
01:54:48 **A.** No. Other staff from my office went including
01:54:51 Investigator Joe Lisi and a medical student and resident
01:54:55 and another doctor from the office, Dr. Shields.
01:54:57 **Q.** And do you recall approximately how many members of
01:55:01 the Medical Examiner's Office went to Rice Road in total on
01:55:04 that Tuesday?
01:55:05 **A.** On that Tuesday I believe there were five of us.
01:55:09 **Q.** Okay, and when you arrived at the scene, were you
01:55:12 met by anybody in law enforcement?
01:55:14 **A.** I don't remember the specifics of who met us, but
01:55:17 there were law enforcement individuals there, and you were
01:55:21 there as well.
01:55:22 **Q.** And again, you might not remember specific names.
01:55:25 Do you remember the law enforcement agency that was there?
01:55:28 **A.** I believe it was the Oswego County Sheriff's
01:55:31 Department.
01:55:31 **Q.** Okay, and were you taken or directed to a specific
01:55:34 area on Rice Road?
01:55:35 **A.** Yes.

01:55:36 **Q.** And generally can you describe the area where you
01:55:39 were taken to?

01:55:39 **A.** Yes. The address I believe was 61 Rice Road, and
01:55:43 there was an area of woods behind the house or the
01:55:47 residence that was located at that address, and I was
01:55:50 directed through those woods to a location about
01:55:52 two-hundred yards away from the residence.

01:55:55 **Q.** And were you -- was your attention drawn to a
01:55:59 particular spot in that wooded area?

01:56:02 **A.** Yes.

01:56:03 **Q.** Okay, and how was your attention drawn to that area?

01:56:07 **A.** The individuals who were leading us to the site
01:56:10 pointed out the area in which appeared to have a collapsed
01:56:14 structure on it. There was also a yellow evidence flag
01:56:18 that was located there.

01:56:19 **Q.** What was your purpose in going to that location,
01:56:25 doctor?

01:56:26 **A.** Well, I had been requested to go to that location by
01:56:29 the coroner slash DA, yourself, in order to examine the
01:56:35 site to see if there was any possibility of human remains
01:56:37 being located there.

01:56:38 **Q.** And generally does the term forensic examination or
01:56:42 forensic excavation, does that term have meaning to you?

01:56:45 **A.** Yes.

01:56:46 **Q.** Okay, and can you describe what that is?

01:56:48 **A.** Well, a forensic excavation is essentially what we
01:56:51 conducted at that site. A forensic excavation is one that
01:56:55 is focussed and is aimed at recovering any evidence or
01:56:58 human remains that may be present that have forensic
01:57:01 relevance.

01:57:02 **Q.** And how did you determine where to begin that
01:57:06 forensic examination?

01:57:07 **A.** Well, the reason that I was told that we were called
01:57:11 to the site was that a cadaver dog had been employed and
01:57:14 the cadaver dog had indicated at a location that as I
01:57:18 mentioned was marked with an evidence flag.

01:57:21 **Q.** And so did your excavation or your examination of
01:57:25 that site focus primarily upon where the dog had hit or
01:57:29 your understanding where the dog had hit the day before?

01:57:32 **A.** Yes. I centered my excavation on that point because
01:57:35 that was the point or the mark if you will that had led us
01:57:40 to the site.

01:57:41 **Q.** And could you please generally describe for the
01:57:45 Court the condition of the ground in that area where that
01:57:48 marker was?

01:57:48 **A.** Well, in that area it was dirt with -- with plant
01:57:56 material growing there. There also nearby was a lot of
01:58:00 debris of manmade material, a collapsed structure, a lot of
01:58:05 glass and insulation and other materials.

01:58:08 **Q.** And focussing on the area you said there was a

01:58:11 marker where you understood the dog had indicated the day
01:58:14 before. That specific area of the ground, did you notice
01:58:18 anything unusual or interesting about that ground?

01:58:20 **A.** No. That area of the ground was actually a little
01:58:24 bit away from, a little bit to the east of the collapsed
01:58:28 structure. I did not notice any depressions or a change in
01:58:32 the vegetation growth there that would suggest to me that
01:58:35 there was a recent grave.

01:58:37 **Q.** Doctor, would you describe for the Court the process
01:58:44 that you used for the forensic examination that was
01:58:47 conducted on that day?

01:58:48 **A.** Yes. The forensic excavation began by identifying
01:58:53 an area around the marker, and essentially arbitrarily we
01:58:59 designated an area ten feet away from that marker in the
01:59:03 four cardinal directions and then marked that off with
01:59:06 string. We then proceeded to clear the surface and prepare
01:59:10 for excavation. All of the dirt that was excavated, that
01:59:14 work was actually done largely by the Sheriff's Office
01:59:18 employees, and then all of the excavated dirt was brought
01:59:22 to the medical examiner's area that was set up for sifting.
01:59:26 The sifting happens through screens that are about two feet
01:59:29 by two feet and have partitions in them of about a quarter
01:59:36 inch so all of the dirt goes through the screen but any
01:59:39 remains would be found as we sift through all of that
01:59:42 material and we did that with -- with all of this dirt from

01:59:46 that large area that we had marked off down to a certain depth in the soil.

01:59:51 **Q.** And doctor, for those stations for the sifting, were there four different stations set up?

01:59:58 **A.** Yes, there were. We generally in these kind of excavations keep the particular quadrants of the area separate so that if we find a remain, a bone, we'll know which quadrant to go back to to look for more.

02:00:11 **Q.** So for instance the northeast quadrant of that area would go to sifting site one, the south east quadrant would go to sifting site two and so forth around?

02:00:22 **A.** That's right.

02:00:22 **Q.** And you said the sheriff's deputies were largely digging into the area, filling up buckets and taking those to the sifting work stations?

02:00:32 **A.** Yes.

02:00:32 **Q.** And what is the purpose in using the sifting station screens?

02:00:37 **A.** Well, the idea is that human remains, teeth or very small bones, could be missed potentially if you did not sift all of the dirt and so sifting all of that dirt insures that we did not miss any small remains that might have been present.

02:00:52 **Q.** And on that Tuesday throughout the sifting process, were you present throughout that whole day?

02:00:57 **A.** Yes.

02:00:58 **Q.** And as the deputy chief medical examiner, were you
02:01:03 essentially in charge of the operation on that day?

02:01:05 **A.** Yes, as far as the medical examiner's involvement.

02:01:08 **Q.** The rest were your subjectives, your subordinates?

02:01:12 **A.** Yes.

02:01:13 **Q.** And throughout the course of that day, do you know
02:01:19 what depth was dug down to by the end of that day on that
02:01:23 first site?

02:01:24 **A.** I know we had reached a depth of twenty-nine inches
02:01:28 or so in our excavation.

02:01:30 **Q.** And during the course of that excavation, those
02:01:33 twenty-nine inches, did you or any member of the Medical
02:01:37 Examiner's Office find anything of significance?

02:01:40 **A.** No, we did not.

02:01:40 **Q.** Now, doctor, have you been to remote sites where
02:01:46 bodies have been found in woods or what they're generally
02:01:50 referred to the media as shallow graves?

02:01:53 **A.** Yes, I have.

02:01:54 **Q.** And typically in those situations where you've -- is
02:01:57 there a particular depth where you would normally expect to
02:02:00 find some items of remains in an area like that?

02:02:03 **A.** Typically in these cases we find the remains within
02:02:06 three feet or less. It's just not practical for an
02:02:10 individual to dig a grave by hand that's deeper than that.

02:02:16 **Q.** And on that Tuesday, the digging was being done by
02:02:22 hand by members of the Sheriff's Department?

02:02:24 **A.** Yes.

02:02:24 **Q.** To your knowledge, did the Medical Examiner's Office
02:02:28 return to that site after Tuesday, July twenty-ninth?

02:02:32 **A.** Yes, some of my staff returned the following day to
02:02:35 continue excavating.

02:02:36 **Q.** And you were not personally present the following
02:02:39 day, that Wednesday?

02:02:40 **A.** No, I had to stay at the office and do autopsies.

02:02:43 **Q.** Now, doctor, can you indicate that part of the
02:02:49 reason or the main reason you were at that scene because a
02:02:52 dog had indicated, a K-9 had indicated the day before.
02:02:56 Have you ever been to other scenes where a K-9 has
02:02:59 indicated on a site indicating human remains?

02:03:01 **A.** Yes, I have.

02:03:01 **Q.** And approximately prior to July twenty-ninth of
02:03:06 2014, how many times had you gone to a site where a K-9 had
02:03:09 indicated?

02:03:09 **A.** Not very many. Probably only two or three times.

02:03:13 **Q.** And on those two or three other occasions, did you
02:03:16 find human remains at those sites?

02:03:18 **A.** No, we did not.

02:03:20 **Q.** Doctor, and based upon your experience and training,
02:03:30 do you have an opinion whether cadaver dogs are always

02:03:34 accurate in detecting human remains?

02:03:37 MS. BIANCO: Objection.

02:03:37 THE COURT: What's the objection?

02:03:38 MS. BIANCO: To her experience and training on
02:03:40 cadaver dogs. There is no foundation that she's worked
02:03:43 with the dogs, that she knows how they're trained, that
02:03:45 she knows anything about working with cadaver dogs.

02:03:47 THE COURT: I'll sustain.

02:03:52 **Q.** Doctor, as part of your training as a medical
02:03:56 examiner or through ongoing training, have you ever gone to
02:04:00 courses where they discuss cadaver dogs and their uses and
02:04:04 potential benefits or limitations?

02:04:07 **A.** I have attended lectures that discussed cadaver dogs
02:04:11 and their uses, but I would not say that I've gone to an
02:04:15 entire course on the topic.

02:04:16 **Q.** Okay, so just focussing on your personal experience
02:04:21 then, have you found the cadaver dogs are a hundred percent
02:04:25 accurate in cases where you have been called out?

02:04:27 MS. BIANCO: Objection to her personal
02:04:30 experience. It's not an expert opinion.

02:04:31 THE COURT: Sustained. No, that's overruled.
02:04:32 She's not qualified as an expert. She's simply saying
02:04:35 her three times. She can answer the question.

02:04:37 **A.** In the three approximately times that I have had
02:04:40 experience with working with cadaver dogs, they did not

02:04:44 indicate actual human remains.

02:04:46 **Q.** Well, to clarify, had the dogs indicated -- when you
02:04:51 said that the dog indicated but you later found there were
02:04:55 no human remains at that site?

02:04:56 **A.** That's right. The dog had indicated that they felt
02:04:59 there might be human remains there, but once an excavation
02:05:02 was performed, no human remains were found.

02:05:08 MR. OAKES: May I have just a moment, Your
02:05:10 Honor?

02:05:10 THE COURT: Sure.

02:05:10 MR. OAKES: No further questions, Your Honor.
02:05:12 Thank you, doctor.

02:05:13 THE COURT: Ms. Bianco?

CROSS-EXAMINATION

02:05:20 BY MS. BIANCO:

02:05:20 **Q.** Good afternoon, Dr. Knight.

02:05:27 **A.** Good afternoon.

02:05:27 **Q.** Now Dr. Knight, when you first arrived at the scene,
02:05:44 you had found that it had already been disturbed, is that
02:05:48 right?

02:05:48 **A.** I'd been told that it already been disturbed. I
02:05:51 don't know that there were necessarily findings that told
02:05:54 me that.

02:05:54 **Q.** You didn't see areas dug up in that particular -- by
02:05:59 the fort or cabin, you didn't see areas dug up?

02:06:03 **A.** I don't recall.

02:06:05 **Q.** And did you personally take any photographs of -- of the area?

02:06:12 **A.** Yes.

02:06:12 **Q.** Okay, and that nothing would refresh your recollection as to whether the area in particular was dug up? Would a photograph?

02:06:21 **A.** I'm sorry, would it?

02:06:22 **Q.** Would a photograph refresh your recollection as to whether the area was dug up when you got there?

02:06:27 **A.** Yes.

02:06:28 **Q.** Okay.

02:06:40 MS. BIANCO: I'm just trying to ascertain a number, Judge.

02:06:44 THE COURT: That's fine.

02:07:04 (Whereupon, there was a pause in the proceeding.)

02:07:29 MS. PEEBLES: It's 66-A.

02:07:32 THE COURT: 66-A.

02:07:34 MS. BIANCO: Um hum.

02:07:36 (Whereupon, there was a pause in the proceeding.)

02:07:52 **Q.** Dr. Knight, I'm going to show you what's been marked Defendant's 66-A through F, and I'm going to ask then to review it yourself and see if any of those would refresh

02:08:02 your recollection as to whether the area was dug up before
02:08:04 your arrival.

02:08:07 MR. OAKES: Your Honor, if I may ask for
02:08:09 clarification from Ms. Bianco, when you say "area," are
02:08:12 you referring to where the structure had been or the
02:08:14 area where the dog had indicated where the examination
02:08:16 was?

02:08:17 THE COURT: I'm looking for some clarification
02:08:19 too.

02:08:19 MS. BIANCO: Well, where the structure had
02:08:21 been is the first question.

02:08:22 THE COURT: Okay, so make sure you distinguish
02:08:24 between areas because there seems to be two areas, one
02:08:27 where the structure was and one where the dog
02:08:30 indicated.

02:08:31 MS. BIANCO: Certainly, Judge.

02:08:32 THE COURT: Thank you.

02:08:54 **A.** I've reviewed the photos.

02:08:55 **Q.** Okay, does that refresh your recollection as to
02:08:59 whether the area appeared to have been disturbed where the
02:09:01 structure was before your arrival?

02:09:03 **A.** Yes.

02:09:04 **Q.** Does that refresh your recollection?

02:09:06 **A.** Yes, yes, it refreshes my recollection.

02:09:08 **Q.** And was that area in fact the area by the cabin

02:09:12 slash fort disturbed prior to your arrival?

02:09:14 **A.** Yes. It does look like in one of the photos here
02:09:17 especially, it's not marked, but I assume it must be A,
02:09:23 that there's some disturbed dirt essentially in the middle
02:09:27 of all of this debris of this structure that I can see.

02:09:31 **Q.** And is it your understanding that the New York State
02:09:36 Police and a cadaver dog was there before you arrived the
02:09:39 day before, is that right?

02:09:41 **A.** It was my understanding that there was a cadaver dog
02:09:44 there sometime before I arrived. I don't know which day.

02:09:47 **Q.** And you were advised that that dog had detected the
02:09:51 presence of human remains, is that correct?

02:09:54 **A.** Yes.

02:09:55 **Q.** And that dog alerted on a particular site, correct?

02:09:59 **A.** That's right.

02:10:00 **Q.** Do you see in any of those photos the site where the
02:10:03 dog alerted?

02:10:04 **A.** I don't see the evidence flag that marked the site
02:10:07 in any of these photos, no.

02:10:18 MS. BIANCO: May I have a moment, Your Honor?

02:10:20 THE COURT: Yes.

02:10:21 (Whereupon, there was a pause in the
02:10:33 proceeding.)

02:10:33 MS. BIANCO: In search of the photos again.
02:10:36 Sorry, Judge.

02:10:37 THE COURT: That's fine.

02:10:39 (Whereupon, there was a pause in the proceeding.)

02:11:09 **Q.** Showing you what's been marked People's Exhibit R, do you recognize this area as the area where the dog alerted and where there was a flag?

02:11:21 **A.** Yes, I do.

02:11:22 **Q.** And did that area appear to be disturbed in any way prior to your arrival on the scene?

02:11:28 **A.** No.

02:11:29 **Q.** So when you arrived at the scene, it was -- was it your decision to dig twenty-nine inches?

02:11:38 **A.** When I -- the question you've asked is when I arrived on the scene. No, I did not decide twenty-nine inches when I arrived on the scene. When I arrived on the scene, I decided to dig around the area of this flag.

02:11:50 **Q.** Whose decision was it to go only twenty-nine inches?

02:11:53 **A.** That decision was made as the excavation progressed. When a layer of undisturbed clay was detected across the entire site at a depth of twenty-nine inches, then the excavation stopped.

02:12:09 **Q.** Did you testify on direct examination that typically remains are found in three feet or less if it's hand dug, correct?

02:12:19 **A.** Yes, on average.

02:12:21 **Q.** Sometimes it's more than three feet, correct?

02:12:24 **A.** Yes, could be.

02:12:25 **Q.** Did the dog come back in your presence to see if
02:12:29 that particular area, if it was still alerting to that
02:12:32 particular area?

02:12:33 **A.** No.

02:12:33 **Q.** And you didn't dig more than twenty-nine inches in
02:12:37 that particular area where the dog alerted, correct?

02:12:40 **A.** That's right.

02:12:45 **Q.** Did you take soil samples from the area where the
02:12:49 dog alerted?

02:12:49 **A.** No.

02:12:50 **Q.** Can you agree that you can't tell if the remains
02:12:55 were once there or moved before your search? Would you
02:12:58 agree with that statement?

02:13:01 THE COURT: I'm not sure I understand the
02:13:02 question.

02:13:02 THE WITNESS: Thank you. That's what I was
02:13:03 going to say.

02:13:04 **Q.** Where the flag number one is, okay, is it possible
02:13:09 that there were remains there once but dug up before you --
02:13:13 before you came?

02:13:15 **A.** It would have to be many years before to leave no
02:13:17 signs of disturbance.

02:13:19 **Q.** Okay, many years could be maybe five?

02:13:22 **A.** Or more.

02:13:23 **Q.** Okay, would you agree that decomposition is strongly
02:13:27 affected by the environment?

02:13:29 **A.** Yes.

02:13:29 **Q.** Regarding human remains left in soil, you're
02:13:56 familiar with the decomposition of human remains in soil,
02:14:00 correct?

02:14:00 **A.** Yes.

02:14:01 **Q.** What types of chemicals would a human remains leave
02:14:04 in soil that was decomposing?

02:14:06 **A.** Human remains leave a number of compounds, many, up
02:14:11 to hundreds of compounds potentially. There are a few that
02:14:15 are thought to be unique to humans like carbon
02:14:20 tetrachloride for example. Those are typically left in
02:14:23 soil where a body has been decomposing.

02:14:26 **Q.** In any area by site one, you took no soil samples to
02:14:32 see -- to test for the presence of human remains?

02:14:34 MR. OAKES: Objection. Asked and answered.

02:14:42 THE COURT: Sustained.

02:14:43 MS. BIANCO: May I have a moment, Your Honor?

02:14:45 THE COURT: Sure, absolutely.

02:14:46 (Whereupon, there was a pause in the
02:14:51 proceeding.)

02:14:51 MS. BIANCO: No further questions. Thank you.

02:14:52 THE COURT: Thank you. Mr. Oakes?

02:14:57 MS. BIANCO: I'll put this back.

02:14:58 THE COURT: Thank you.

02:15:00 REDIRECT EXAMINATION

02:15:01 BY MR. OAKES:

02:15:01 **Q.** Doctor, you testified at approximately twenty-nine
02:15:15 inches there was an area of undisturbed clay. Can you
02:15:19 describe for the Court what you mean by that and what the
02:15:22 significance of that finding was?

02:15:23 **A.** Well, essentially there was a change in the soil
02:15:26 such that there was a layer, a thick layer of clay that was
02:15:31 undisturbed that had not been mixed with soil through
02:15:35 digging previously, and so we stopped at that point because
02:15:39 of the fact that if it had been breached previously, we
02:15:43 would have seen a disturbance in that clay level.

02:15:47 **Q.** And that decision to stop at that area, would that
02:15:50 be consistent with your practice in other digs, other
02:15:53 forensic digs that you have been a part of?

02:15:55 **A.** Yes.

02:15:55 **Q.** And would that be consistent with best practices or
02:15:59 protocol in the area of medical examiners?

02:16:02 **A.** To my knowledge, yes.

02:16:04 MR. OAKES: Okay, no further questions, Your
02:16:06 Honor.

02:16:06 THE COURT: Ms. Bianco?

02:16:08 MS. BIANCO: I just have a couple of

02:16:10 questions.

02:16:11 RECROSS-EXAMINATION

02:16:12 BY MS. BIANCO:

02:16:13 **Q.** Mr. Oakes just asked you if digging to the clay
02:16:29 surface is consistent with protocol. Remember that answer?
02:16:33 Remember that question, excuse me.

02:16:35 **A.** Yes.

02:16:35 **Q.** Okay, in your two prior experiences with the dogs
02:16:41 that you talked about, did you dig below twenty-nine
02:16:44 inches?

02:16:45 **A.** I don't recall the specific depth of those digs.

02:16:48 **Q.** Well, when were those digs?

02:16:51 **A.** Again, I don't recall the specific dates. These
02:16:55 were, you know, during the course of my career I've had a
02:16:57 number of different forensic excavations and only a very
02:17:02 small number have involved cadaver dogs.

02:17:04 **Q.** Okay, well, where -- where were those experiences?

02:17:07 **A.** At least one of them was here in Oswego County I
02:17:11 believe, it was in this area, this region any way, and
02:17:15 another one was in a previous jurisdiction that I worked in
02:17:18 in Kansas City.

02:17:19 **Q.** The one in Oswego County, do you remember what case
02:17:22 that was on?

02:17:22 **A.** No, I don't remember specifically.

02:17:25 **Q.** You just remember that nothing was found?

02:17:27 **A.** That's right.

02:17:28 **Q.** Have you ever been involved in a case where a dog
02:17:31 alerted to remains and the remains were found?

02:17:34 **A.** No. As I answered previously to that question, I
02:17:37 have not had a case where a cadaver dog alerted and there
02:17:40 were actually human remains found.

02:17:42 **Q.** But you've only been involved in two other cases,
02:17:44 correct?

02:17:44 **A.** Two or three was my answer previously, yes.

02:17:47 **Q.** Did you know the history of those dogs and whether
02:17:50 they had found bodies in the past?

02:17:51 **A.** No.

02:17:52 MR. OAKES: Objection.

02:17:53 THE COURT: Hold on. What's your objection?

02:17:55 MR. OAKES: Beyond the scope.

02:17:56 THE COURT: Well beyond the scope. Sustained.

02:17:58 MS. BIANCO: No further questions.

02:18:01 THE COURT: Is the doctor subject to recall or
02:18:04 can she go?

02:18:05 MR. OAKES: I believe she can go, Your Honor.

02:18:06 THE COURT: Thank you, doctor. Have a good
02:18:09 day.

02:18:09 THE WITNESS: You too.

02:18:10 THE COURT: Next witness?

02:18:11 MR. OAKES: Your Honor, People call William

02:18:13 Walsh.

WILLIAM WALSH, Called as a witness, having been
02:18:59 duly sworn, was examined and testified as follows:

02:18:59 THE CLERK: Please state your name for the
02:19:01 record.

02:19:01 THE WITNESS: Bill Walsh, W-A-L-S-H.

02:19:03 THE CLERK: Thank you.

02:19:04 THE COURT: Judge Walsh, before we start
02:19:05 having questions presented to you, do you consent to
02:19:09 having your testimony video or audio taped?

02:19:11 THE WITNESS: Sure. My courtroom was always
02:19:12 open.

02:19:12 THE COURT: Okay.

02:19:13 (People's Exhibit PPP was marked for
02:19:20 identification).

02:19:20 MR. OAKES: Your Honor, do you have any
02:19:22 objection if I refer to the judge as judge during the
02:19:25 proceedings?

02:19:25 THE WITNESS: I'm retired. I'm Bill.

02:19:27 MR. OAKES: Bill, okay.

02:19:28 THE WITNESS: Yeah.

02:20:43 THE COURT: Ms. Bianco, what did you do with
02:20:46 Exhibits 8, 9 and 10? You were showing them to the
02:20:48 officer and then you realized it was NNN.

02:20:54 MS. BIANCO: I put them back up on the --

02:21:37 (Whereupon, there was a pause in the
02:23:06 proceeding.)

02:23:06 MR. OAKES: Thank you, Your Honor.

02:23:09 DIRECT EXAMINATION

02:23:09 BY MR. OAKES:

02:23:10 **Q.** Good afternoon, Mr. Walsh.

02:23:16 **A.** Good afternoon.

02:23:16 **Q.** Can you please describe to the Court your
02:23:25 involvement with the case of Richard Thibodeau?

02:23:29 **A.** I was the attorney that represented Richard
02:23:32 Thibodeau at trial.

02:23:34 **Q.** And when did you first become involved with Richard
02:23:37 Thibodeau's case?

02:23:39 **A.** I can't tell you exactly when I was assigned to
02:23:45 represent him. Whenever that was.

02:23:48 **Q.** Through the course of your representation was it an
02:23:50 assignment or were you retained?

02:23:53 **A.** I was assigned.

02:23:54 **Q.** And during -- do you know who the codefendant was
02:23:59 for Richard Thibodeau?

02:24:01 **A.** His brother, Gary.

02:24:02 **Q.** And do you know who represented Gary Thibodeau?

02:24:04 **A.** Joseph Fahey.

02:24:06 **Q.** And during the course of your representation of Gary
02:24:09 Thibodeau, did you ever speak with Attorney Fahey about the

02:24:13 cases?

02:24:13 **A.** I represented Richard.

02:24:16 **Q.** Right.

02:24:17 **A.** I think you said Gary.

02:24:18 **Q.** I may have misspoke, I'm sorry. During the course 02:24:20 of your representation of Richard Thibodeau, did you ever 02:24:23 speak with Attorney Fahey regarding his representation of 02:24:27 Gary?

02:24:28 **A.** Certainly. The cases were separated later on, but 02:24:32 early on we represented them jointly.

02:24:35 **Q.** Because the allegation is that the two men acted 02:24:42 together in concert?

02:24:43 **A.** That I --

02:24:44 **Q.** The allegation from the prosecution was that Gary 02:24:47 and Richard Thibodeau had acted together and in concert in 02:24:51 the kidnapping of Heidi Allen, correct?

02:24:53 **A.** Yes, that's true.

02:24:54 **Q.** And do you recall who the assistant district 02:24:57 attorney was who was prosecuting the case?

02:24:59 **A.** Donald Dodd and Donald Todd I think represented the 02:25:04 People.

02:25:04 **Q.** And during the course of the investigation, did you 02:25:10 hire an investigator or did you work with an investigator 02:25:15 on the case?

02:25:16 **A.** I did not hire an investigator. I represented

02:25:18 Richard entirely by myself. Robert Calver was the
02:25:23 investigator hired by Joseph Fahey to assist him in his --
02:25:27 in Gary's defense.

02:25:29 **Q.** Okay, and during the course of your representation
02:25:32 of Richard, did you ever speak with Mr. Calver?

02:25:35 **A.** Yes.

02:25:36 **Q.** And did Mr. Calver ever provide you with information
02:25:41 that he had obtained during the investigation relative to
02:25:44 Gary essentially sharing information between the two
02:25:47 brothers?

02:25:48 **A.** I'm sure that he did.

02:25:51 **Q.** And for the two cases, the case of Gary Thibodeau,
02:25:58 this defendant went to trial first, correct?

02:26:01 **A.** Correct.

02:26:01 **Q.** And before Gary Thibodeau's trial, did you ever
02:26:08 speak with Attorney Fahey about the defenses or about
02:26:12 certain evidence that had been provided?

02:26:13 **A.** Of course.

02:26:14 **Q.** And generally what were the nature of those
02:26:17 conversations or what -- what were they about?

02:26:20 **A.** Normal conversations you'd have with any co-counsel
02:26:25 in a criminal case. The defense, the witnesses, evidence,
02:26:32 virtually everything that affected the case.

02:26:34 **Q.** And during the course of preparing for the trials,
02:26:38 for both trials, did you review any reports that you had

02:26:42 obtained from the Sheriff's Department, review those with Attorney Fahey or have discussions about certain reports, certain documents?

02:26:50 MS. BIANCO: Objection. He's leading the witness, Your Honor.

02:26:52 THE COURT: It's a foundational question. I'll allow it.

02:26:55 **A.** We spoke about any number of different things.

02:26:59 **Q.** During the course of Gary Thibodeau's trial, what was your involvement with the trial?

02:27:07 **A.** I was not involved in the trial, but I was allowed to sit at the defense table with Joseph Fahey and Gary Thibodeau.

02:27:17 **Q.** And Mr. Walsh, what was the purpose of you being at the defense table with Gary Thibodeau and Attorney Fahey?

02:27:26 **A.** Well, personally I wanted to be there to watch the case and see how it went. If I had the opportunity to do that, then I felt that I would have a leg up in Richard's defense.

02:27:43 **Q.** And during the course of the trial, during the actual proceedings in the courtroom, did you ever talk with Attorney Fahey about a line of questioning, or look, are there any other questions that we should be asking, have those types of conversations with him?

02:28:00 **A.** I'm sure that occurred but Joseph Fahey is an

02:28:03 eminently skilled lawyer. I wouldn't be -- I think I mentioned in my affidavit I wouldn't be presumptuous enough to tell him how to try a case.

02:28:11 **Q.** Mr. Walsh, would it be fair to say that the amount of discovery you obtained from the District Attorney's Office was voluminous?

02:28:21 **A.** At a minimum.

02:28:23 **Q.** And when you obtained the discovery from the District Attorney's Office, can you please describe what efforts you personally made to organize your file?

02:28:34 **A.** I -- I can't tell you exactly how much time I spent, but just my -- the assigned counsel voucher, I kept track of the time naturally that I would spend on the case, but I just spent countless hours going through it. There was just so much material to deal with it took me months to go through it.

02:28:53 **Q.** And setting aside how long it took you, can you generally describe the process that you went through in organizing it? What was your methodology?

02:29:04 **A.** What I tried to do is --

02:29:07 MS. BIANCO: Objection. Your Honor, objection to his methodology of organizing his file.

02:29:10 THE COURT: Yeah. Where are we going with this?

02:29:12 MR. OAKES: Well, Your Honor, the defense's

02:29:14 argument is that they compared Attorney Walsh's file to
02:29:18 the file of Attorney Fahey and that's how they
02:29:21 discovered they didn't have certain documents so I
02:29:23 think how this witness prepared his file and organized
02:29:26 it is relevant.

02:29:27 THE COURT: I'll allow it.

02:29:28 MS. BIANCO: Your Honor, it had nothing to do
02:29:31 with how it's organized, we just compared what he had
02:29:34 to what Judge Fahey had.

02:29:37 THE COURT: I'll allow it. I think it's a
02:29:39 semantics argument.

02:29:40 **A.** What I attempted to do was with each document, if
02:29:43 there was a name on the document, whether it was a witness
02:29:47 or a law enforcement officer, I developed a file for that
02:29:53 individual. If there were two names, I would make two
02:29:56 copies and make two files, and I did that with every single
02:30:01 document that I had, so by the time I had finished the
02:30:04 case, I -- I don't know how many files that I had, but any
02:30:07 time anybody was mentioned in a file, that was copied and
02:30:12 that piece of paper went in the file, and that way I had a
02:30:17 file for everybody that was mentioned, and any time another
02:30:20 piece of paper came up, that went in their particular file,
02:30:25 so each file with a person's name on it had every piece of
02:30:29 paper that that individual's name was -- was listed on.

02:30:33 **Q.** Okay, and just so that I'm clear, Mr. Walsh, if you

02:30:37 received a ten-page report that had three individual's
02:30:39 names on it, you'd make three copies of that ten-page
02:30:43 report and make a sub-file under the name of each of those
02:30:46 people?

02:30:46 **A.** That's correct.

02:30:47 **Q.** Now during the course of preparing for the trial and
02:30:52 meeting with Attorney Fahey, did you ever have an
02:30:55 opportunity to review his file, his physical paper file?

02:30:59 **A.** I -- I did see his file at his home. He had that in
02:31:03 his attic.

02:31:04 **Q.** And when was that?

02:31:05 **A.** Sometime before the trial.

02:31:08 **Q.** And you said you saw the file in the attic. Was
02:31:11 this basically a prep session between the two of you?

02:31:14 **A.** No, he just -- for some reason we wound up going up
02:31:17 to his attic so he could show me the file that he had and
02:31:20 how he was organizing it.

02:31:22 **Q.** Okay, and what was the condition of his file when
02:31:25 you saw it that day?

02:31:27 **A.** Well, it was -- I would say it was loosely organized
02:31:31 but it was -- it was so big that he had it spread out all
02:31:35 over his attic. I mean it was a very large room that it
02:31:40 was in, and it was just -- there were papers everywhere.

02:31:43 **Q.** Did he have a filing system like yours where there
02:31:46 was a sub-file for each person named in each report?

02:31:49 **A.** No. I don't -- Joseph Fahey wasn't as particular as I was in that respect, but what Joseph would -- Joseph knew not only what was on every single piece of paper, he knew where it was and how to locate it. That's what -- I was somewhat astounded by that. He's got a terrific memory, and he could -- his desk at his office downtown, we shared space as judges, it was piled like this, (indicating) but he knew where every single piece of paper was and he knew what was on it. I found that incredible, but he was good at it.

02:32:25 **Q.** Now, when the case went to trial for Gary Thibodeau, and you were at counsel's table, could you see Attorney Fahey's file, the file that he was working from during the trial for Gary Thibodeau?

02:32:39 **A.** Yes, he had that with him.

02:32:42 **Q.** Okay, and how was that organized?

02:32:44 **A.** I -- I believe it was in -- in boxes. I can't -- I don't have a specific recollection of that. I had my file there, but -- but Joseph also had his as well.

02:32:56 **Q.** And when you say you had your file, did you have the entirety of your file with you?

02:33:01 **A.** I had everything that I had, yes.

02:33:02 **Q.** What was the purpose of bringing your file to Gary Thibodeau's trial?

02:33:07 **A.** I just -- Joe and I discussed it, and we just

02:33:10 thought it would be best to have both files there just in
02:33:13 case I had -- if he couldn't lay his hand on a piece of
02:33:16 paper for some reason, he could always ask me for it, and I
02:33:19 had it labeled by name, so any witness that testified, I
02:33:24 had a file with everything that his name was associated
02:33:28 with right there as a backup to whatever Joseph Fahey had.

02:33:33 **Q.** Okay, and Mr. Walsh, were there any times during the
02:33:37 trial of Gary Thibodeau where Attorney Fahey couldn't
02:33:39 locate a piece of paper and you had to find a report or a
02:33:43 statement from your file?

02:33:44 **A.** Yes.

02:33:45 **Q.** Did that happen once or more than once?

02:33:48 **A.** I'm sure it was more than once because I remember
02:33:51 when he would finish with a piece of paper, he'd toss it on
02:33:54 the desk, and I would scramble to get it to put it back in
02:33:58 my file so I wouldn't lose it.

02:34:00 **Q.** And if you had to estimate, how many times would you
02:34:04 say that he looked at reports or statements or something
02:34:07 from your file during the course of Gary Thibodeau's trial,
02:34:10 ballpark?

02:34:11 MS. BIANCO: Objection to reports. Why don't
02:34:13 we ask specifically about these reports.

02:34:15 THE COURT: Yes. Let's get to the point.

02:34:17 MR. OAKES: Well, part of what we're trying to
02:34:19 show, Your Honor, is that Attorney Fahey had access to

02:34:22 Attorney Walsh's files, so again, the idea that if it
02:34:25 was in Attorney Walsh's file, it was essentially
02:34:28 available to Attorney Fahey during the course of the
02:34:31 trial.

02:34:31 MS. BIANCO: I'm going to object to that. The
02:34:33 fact that one attorney may have gotten paperwork the
02:34:35 other attorney didn't --

02:34:36 THE COURT: I can't make that leap. I'll
02:34:39 agree with you. I'll sustain on that end.

02:34:41 **Q.** Okay, Attorney Walsh, when was Richard Thibodeau's
02:34:51 trial if you recall?

02:34:54 **A.** Twenty years ago.

02:34:56 **Q.** Good answer. And you were obviously in private
02:35:03 practice at the time that you were representing Richard
02:35:05 Thibodeau. At some point did you leave private practice?

02:35:10 **A.** Yes.

02:35:12 **Q.** And when was that?

02:35:14 **A.** I believe it was 2001 I was elected to the bench.

02:35:19 **Q.** Onondaga County Court?

02:35:21 **A.** Correct.

02:35:21 **Q.** And you served a full ten-year term, correct?

02:35:25 **A.** That's correct, and then one -- there was one
02:35:27 election after that and I served one year and then decided
02:35:31 to retire.

02:35:32 **Q.** And when you took the bench, what happened to the

02:35:38 file for Richard Thibodeau?

02:35:41 **A.** Well, I -- I believe it was much earlier than that, 02:35:47 I think it was after Richard's trial that he asked to have 02:35:52 the file back and so I gave him everything I had. I think 02:35:56 that was after -- sometime after the trial, I don't know 02:35:59 when, but I don't think it was too much longer than when -- 02:36:03 when he was acquitted, it was shortly thereafter I believe. 02:36:08 I'm not sure but --

02:36:10 **Q.** To the best of your recollection probably within a 02:36:12 year of the acquittal?

02:36:13 **A.** Yes, I believe so.

02:36:15 **Q.** And so if the trial occurred in ninety-five, 02:36:19 probably no later than at the end of ninety-six?

02:36:21 **A.** That would be my best guess.

02:36:23 **Q.** And you haven't seen the file since that time?

02:36:25 **A.** No.

02:36:26 **Q.** No?

02:36:29 **A.** I should say I -- I did have some associated 02:36:34 paperwork that I kept but it wasn't -- it may have been 02:36:39 duplicates of some of the paperwork in the trial file but 02:36:42 I -- I felt that I wanted to keep those for some reason.

Q. Okay.

02:36:46 **A.** I -- I threw those out after I decided to retire. I 02:36:50 think that was the last thing in my office that I threw in 02:36:52 the wastebasket.

02:36:54 **Q.** Attorney Walsh, during the course -- well, prior to Gary Thibodeau's trial, did you ever have the occasion to meet with Investigator Terry Whipple of the Sheriff's Department?

02:37:09 **A.** Yes, I met -- I met Terry and I used to speak with him quite regularly.

02:37:14 **Q.** Okay, and did you ever have an occasion to meet with him at the Oswego County DA's Office, essentially the Grand Jury room, the old Grand Jury room?

02:37:23 **A.** I'm sure I did.

02:37:24 **Q.** And do you recall ever reviewing any files with him or attending any meetings with Investigator Whipple when Attorney Fahey was also present?

02:37:37 **A.** That I can't be sure. I know that I -- I spoke with Investigator Terry Whipple at length, not just about the trial but a lot of other interests that we shared. I liked him very much. I thought he was an excellent investigator. In fact I was jealous of his file because his was color coded. He had one leg up on me there.

02:38:08 **Q.** Mr. Walsh, in preparation for this hearing and during the course of the more recent litigation, the 440 subject of the hearing, you were provided with certain documents by my office, by me, correct?

02:38:20 **A.** Correct.

02:38:20 **Q.** And you reviewed those?

02:38:22 **A.** When you sent them to me, yes.

02:38:24 MR. OAKES: Your Honor, may I approach the witness?

02:38:34 THE COURT: Sure, absolutely.

02:38:41 **Q.** (Handing). Mr. Walsh, the document that I provided to you that's been marked I believe as PPP, is that PPP in front of you, Mr. Walsh?

02:39:40 **A.** There's Exhibit M, N, O and P.

02:39:44 **Q.** And I apologize, Mr. Walsh. Okay, for the sake of the proceedings marked as -- identification PPP?

02:39:53 **A.** Yeah, okay.

02:39:55 **Q.** Okay.

02:39:55 **A.** PPP, correct, I'm sorry.

02:39:58 **Q.** Nope, that's fine. And you recognize PPP?

02:40:02 **A.** Yes. There's four exhibits, M, N, O and P.

02:40:07 **Q.** Okay, and you reviewed those reports prior to today and actually several months ago, correct?

02:40:15 **A.** Correct.

02:40:15 **Q.** And I'm going to ask you to take a look at what's identified as Exhibit M.

02:40:22 **A.** I have.

02:40:22 **Q.** And what I'm going to ask you to do, Mr. Walsh, is compare what's in front of you as Exhibit M to what's been received at this hearing as Defendant's Exhibit 5. I think the typed pages look different, but it starts here and goes

02:40:51 through.

02:41:00 **A.** All right, I have the two of them.

02:41:02 **Q.** Okay, and what's identified as Exhibit M as part of
02:41:08 PPP, is that the same report that appears in Exhibit 5 that
02:41:12 you're holding in your left hand?

02:41:18 **A.** It's different.

02:41:20 **Q.** The typeface is different?

02:41:22 **A.** Well, it appears that the -- it is different. The
02:41:33 last paragraph is different.

02:41:35 **Q.** Okay, and what I'd ask you to do --

02:41:39 **A.** I can tell that without my glasses.

02:41:42 **Q.** Looking at the bottom of this page, as part of
02:41:45 Exhibit 5, I believe it would correspond to here, if we
02:41:49 turn to the last page of Exhibit 5 that's been received in
02:41:52 this hearing as Exhibit 5, does this correspond with this
02:41:57 here if you would please compare the two?

02:42:04 THE COURT: Mr. Walsh, do you want to borrow
02:42:07 my glasses?

02:42:07 THE WITNESS: I may have to borrow those, Your
02:42:11 Honor.

02:42:17 MS. BIANCO: If the witness would like some
02:42:19 reading glasses, we have them.

02:42:32 **A.** Yes. The second page of Exhibit 5 does portray the
02:42:41 lower two-thirds of Exhibit M.

02:42:44 **Q.** Okay.

02:42:44 **A.** And the first page that you showed me of that exhibit, that really didn't match up with the top of Exhibit M. That's where the confusion was.

02:42:56 **Q.** That was my confusion as well, Mr. Walsh.

02:42:58 **A.** Okay.

02:42:59 **Q.** But the information that appears on Exhibit M of PPP -- well, let me ask you. Exhibits M, N, O and P which are part of what's been marked for identification as People's Exhibit PPP for this hearing, were those attached to an affidavit that you prepared in the fall of last year?

02:43:21 **A.** That's correct.

02:43:22 **Q.** And do you recognize those Exhibits M, N, O and P as generally corresponding to exhibits that were attached to defense motion in this case?

02:43:31 **A.** I believe so.

02:43:32 **Q.** And reviewing Exhibit M that was attached to defense motion which is part of PPP, had you seen that report or when did you first see that report?

02:43:45 **A.** Well, I think more properly you asked me if I remembered seeing that exhibit, if I was furnished that exhibit at trial.

02:43:57 **Q.** Yes.

02:43:57 **A.** And I believe in my affidavit I said that as far as Exhibit M, I couldn't be certain.

02:44:03 **Q.** Okay.

02:44:04 **A.** As far as the other three, I was fairly certain that I had received those, but again, I can't say for absolute certainty, with absolute certainty, I'm sorry.

02:44:18 **Q.** So Exhibit No. 5 which has been admitted here at the hearing, that report, you're not certain whether you received that or not prior to trial?

02:44:31 **A.** I -- I can't say with any -- I can't say I'm absolutely certain. It seems familiar but I -- I really can't say. N, O and P I -- I do seem to recall, and I think I used those at trial, but again, the transcript from the first trial would be dispositive of that.

02:44:52 **Q.** Okay, and Mr. Walsh, if you would, would you turn to Exhibit N that's in that packet?

02:45:00 **A.** Exhibit N?

02:45:01 **Q.** N.

02:45:02 **A.** Okay.

02:45:03 **Q.** N as in Nancy please. Actually take this back.

02:45:11 MS. PEEBLES: Judge, we're having a hard time following the exhibits.

02:45:14 THE COURT: So am I.

02:45:15 MS. PEEBLES: And I know -- I understand why he's using those, but what he's referring to is already in evidence. It would make more sense if he used what we already have marked.

02:45:25 MR. OAKES: Well, that's where I'm going for

02:45:27 the remaining Exhibit M that the defense attached to
02:45:30 their motion.

02:45:31 THE COURT: M for Michael or N for Nancy?

02:45:34 MR. OAKES: Sorry. This witness was familiar
02:45:36 with Exhibit M as in Michael which was attached to the
02:45:40 defense motion.

02:45:42 THE COURT: Okay.

02:45:43 MR. OAKES: The portion of the report that
02:45:44 they attached to their motion, 440 motion, is what this
02:45:47 witness had reviewed. That's different than the
02:45:50 exhibit that they've offered here at the hearing, so
02:45:52 that was part of the differences. This witness had
02:45:55 seen what was attached to their motion as M as in
02:45:58 Michael.

02:45:58 THE COURT: Right.

02:45:59 MR. OAKES: Rather than Exhibit 5. The other
02:46:02 exhibits, N, O and P, do correspond with exhibits that
02:46:06 have been entered, and we can show those more directly
02:46:09 at this point.

02:46:09 THE COURT: That's fine. Let's get right to
02:46:11 that.

02:46:11 **Q.** Okay, in looking at Exhibit N, Mr. Walsh, I'm going
02:46:15 to hand you what's been received as Defendant's Exhibit 9.
02:46:24 Are those the same?

02:46:24 **A.** They're the same.

02:46:25 **Q.** Okay, and so as far as Exhibit 9, it's your recollection that you did receive that document prior to trial?

02:46:34 **A.** Yes.

02:46:35 **Q.** I'm now going to ask you to turn to Exhibit O, and I'm going to hand you what's been received at this hearing as Defendant's Exhibit 8 and ask you to compare those, Mr. Walsh.

02:46:55 **A.** They're the same.

02:46:57 **Q.** And regarding Defense Exhibit 8, did you receive that prior to trial?

02:47:04 MS. BIANCO: I'm going to object to the prior trial. If we can ask specifically when because that trial was months after Fahey's trial.

02:47:11 THE COURT: That's fine if you ask him that.

02:47:15 **Q.** Mr. Walsh, do you recall when you received Exhibit 9?

02:47:17 **A.** When you sent it to me or --

02:47:21 **Q.** I'm sorry, going back to the time of the discovery, when the discovery was turned over to you by Mr. Dodd, do you recall, do you have a specific recollection as to when you received that?

02:47:32 **A.** No. Not a chance. There were just boxes of stuff.

02:47:38 **Q.** But you do recall receiving Exhibit 9?

02:47:41 **A.** I believe I did receive this, but again, I can't say

02:47:44 with absolute certainty, but I'm rather familiar with it
02:47:48 and I think I did receive it.

02:47:49 **Q.** And do you have a recollection whether you would
02:47:55 have received that prior to the trial of Gary Thibodeau?

02:47:58 **A.** I again, if I -- it would depend upon when the
02:48:06 information was furnished to me by the District Attorney's
02:48:09 Office. That was an ongoing process. I believe the lead
02:48:12 sheets just kept snowballing all through the beginning
02:48:18 stages of the proceedings. Not the legal proceedings, but
02:48:24 during discovery I kept receiving documents as we went
02:48:27 along. The case was still in flux even as we went forward
02:48:32 with it.

02:48:33 **Q.** Mr. Walsh, I'm going to ask you to turn to Exhibit P
02:49:03 that you previously reviewed as part of your affidavit.
02:49:18 I'm now going to hand you what's been marked for
02:49:20 identification as -- well, what's been received at this
02:49:23 hearing as Exhibit 11-A, and I'm going to ask you to turn
02:49:27 to a page -- actually I think it's the first one, and I'm
02:49:48 going to ask you to turn to page two here and compare it to
02:49:52 what's been received as part of Exhibit 11-A, and do you
02:50:00 recognize the document that appears in Exhibit 11-A?

02:50:04 **A.** 11-A is different than Exhibit P.

02:50:09 **Q.** Okay, but the information that's in the report for
02:50:14 11-A with the writing on, "this writer along with -- "

02:50:20 **A.** That appears to be the same. It appears to be a

02:50:22 copy.

02:50:23 **Q.** But the information that was contained in that 02:50:29 report, that had been provided to you?

02:50:32 **A.** Yes, I believe so.

02:50:35 **Q.** And do you recall -- if you recall, Mr. Walsh, when 02:50:39 that was provided to you?

02:50:41 **A.** No.

02:50:49 MS. BIANCO: Judge, Mr. Oakes is pointing to a 02:50:51 stamp. There's two stamps. I don't know which one you 02:50:54 were pointing to.

02:50:59 **Q.** I was pointing to the second page of Exhibit 11-A, 02:51:05 the first page being the cover letter for Mr. Dodd and then 02:51:10 the second page being that report. Is that correct, Mr. 02:51:12 Walsh?

02:51:13 **A.** Yes.

02:51:13 **Q.** As to what you were speaking of?

02:51:17 **A.** Yes.

02:51:21 **Q.** Mr. Walsh, I'm going to hand you what's been 02:52:52 received during this hearing as Defendant's Exhibit 11 and 02:52:56 ask you to compare that to P.

02:53:08 **A.** They're the same.

02:53:10 **Q.** And Exhibit 11 is actually multiple pages, I believe 02:53:15 three pages?

02:53:17 **A.** That is correct. They're not -- the second page is 02:53:20 not exactly the same because the annotation below the

02:53:26 verbiage at the top where it says regarding OCSD evidence
02:53:31 R. Thibodeau, G. Thibodeau, I-N-U Kleist, I-N-V Kleist.
02:53:37 That was added, and it's not on the Exhibit P, but other
02:53:42 than that, they're identical.

02:53:43 **Q.** Okay, and other than that difference that you have
02:53:46 just described, do you remember receiving Exhibit 11?

02:53:49 **A.** Yes.

02:53:50 **Q.** From the District Attorney's Office?

02:53:51 **A.** That's correct.

02:53:52 **Q.** And do you recall when you received that, Mr. Walsh,
02:53:59 from the DA's Office?

02:54:00 **A.** Twenty years ago approximately.

02:54:56 **Q.** Mr. Walsh, Gary Thibodeau's trial took place in May
02:55:01 and early June of 1995. Is that your recollection?

02:55:06 **A.** I'll agree with you. I don't really remember.

02:55:09 **Q.** Okay, prior to Gary Thibodeau's trial, were you
02:55:15 aware of information that Heidi Allen had been identified
02:55:18 as a confidential informant?

02:55:21 **A.** I -- I was aware of that, but I can't tell you when
02:55:36 I was aware of that.

02:55:39 **Q.** Mr. Walsh, do you recall attending a pretrial
02:55:42 conference or motion arguments that occurred in December
02:55:44 eighth of -- December eighth of 1994 regarding Gary
02:55:49 Thibodeau's case and Richard Thibodeau's case?

02:55:52 **A.** I don't recall.

02:55:53 MS. BIANCO: Objection. I don't know if he's
02:55:55 impeaching his own witness or --

02:55:56 THE COURT: Hold on a second.

02:55:58 MS. BIANCO: Is he impeaching his own witness?
02:56:02 He hasn't asked a question, or if he's trying to
02:56:03 refresh his recollection without a question being
02:56:06 asked, I think it's improper and he's leading.

02:56:09 THE COURT: Does somebody need water in the
02:56:14 back? It's not a problem if they do. But ask the
02:56:17 question. I didn't hear a question because there was
02:56:19 coughing. Go ahead. Ask the question.

02:56:21 MR. OAKES: Certainly. Well, Your Honor, I --
02:56:24 I had asked the witness whether he was aware of her
02:56:28 status as a confidential informant.

02:56:30 THE COURT: Correct.

02:56:30 MR. OAKES: He said he was unsure of the time.
02:56:33 What I was attempting to do is refresh his recollection
02:56:35 as to when he was aware of that.

02:56:36 THE COURT: Then ask that question so it
02:56:40 doesn't sound like you're trying to impeach him.

02:56:42 **Q.** Mr. Walsh, if you were to see a transcript from the
02:56:45 December eighth, 1994 appearance that you appeared, would
02:56:48 that potentially refresh your recollection as to whether
02:56:51 you knew at that time?

02:56:52 **A.** I don't know.

02:56:53 **Q.** Okay, could it potentially refresh your
02:56:57 recollection?
02:56:57 **A.** Potentially anything.
02:56:58 **Q.** Okay.
02:58:04 THE COURT: This might be a good time for a
02:58:05 ten-minute recess. It's been almost two hours. Okay.
02:58:09 Mr. Walsh, would you please step down. We'll be back
02:58:16 at 3:10.
02:58:17 (Whereupon, there was a recess.)
03:11:21 THE COURT: Mr. Walsh, consider that you're
03:11:22 still under oath, sir.
03:11:23 THE WITNESS: Yes, sir.
03:11:29 BY MR. OAKES:
03:11:29 **Q.** Mr. Walsh, I'm going to hand you what's been
03:11:32 received in evidence as People's Exhibit B, transcript of
03:11:36 the December eighth, 1994 appearance before the Honorable
03:11:40 Jack Brandt, John Brandt, where you and Attorney Fahey were
03:11:45 present. I'm going to ask you to turn to the page if you
03:11:48 would please, Your Honor, Mr. Walsh, where the orange
03:11:52 sticker, where it's flagged, and begin reading where it
03:11:56 says "Mr. Fahey" and read through the next page if you
03:12:00 would please.
03:12:08 (Whereupon, there was a pause in the
03:12:53 proceeding.)
03:12:53 **A.** Yeah, I've read the two pages.

03:12:54 **Q.** Mr. Walsh, after reading those two pages, does that refresh your recollection whether you were aware of Heidi Allen's status of confidential informant?

03:13:04 MS. PEEBLES: Can we have the page number that he's referred to?

03:13:07 THE WITNESS: The two pages that I just read from were page thirty, the bottom paragraph, and through the entire page thirty-one.

03:13:17 MS. PEEBLES: Thirty-one? Thank you.

03:13:20 **Q.** Mr. Walsh, does that refresh your recollection whether you were aware that Heidi Allen was a confidential informant on the date of that appearance?

03:13:28 **A.** I don't have any recollection of this at all. I mean what's -- I don't dispute the transcript but I -- I don't remember the hearing.

03:13:37 **Q.** Do you remember speaking with newspaper reporters in the day or two following that court appearance, Mr. Walsh?

03:13:45 **A.** In all likelihood I did but I don't remember.

03:13:48 **Q.** If you were to receive one of those newspaper reports, Mr. Walsh, would that potentially refresh your recollection?

03:14:01 **A.** Anything's possible, Mr. Oakes.

03:14:05 **Q.** Okay.

03:14:08 **A.** This presumes they got it right, correct?

03:14:26 **Q.** Mr. Walsh, I'm going to hand you what's been

03:14:29 received as Defendant's Exhibit 7 in this matter and ask you if you would take a moment to review that silently to yourself.

03:14:37 **A.** Certainly.

03:14:40 THE COURT: Mr. Oakes, you might want to take back People's Exhibit B.

03:14:45 MR. OAKES: Thank you, Your Honor.

03:16:39 **A.** Okay, I've reviewed that.

03:16:41 **Q.** Okay, and that -- is that the December ninth, 1994, Mr. Walsh?

03:16:48 **A.** Yes.

03:16:49 **Q.** And reviewing that, does that refresh your recollection?

03:16:53 **A.** No.

03:16:56 **Q.** Mr. Walsh, I'm going to ask you if you would please review Defense Exhibit 4, a December seventh, 1994 article if you would please?

03:17:19 THE COURT: What's the date of that? December what?

03:17:21 MR. OAKES: December seventh.

03:17:23 MS. BIANCO: Your Honor, is there a question pending or is he just reviewing exhibits?

03:17:27 THE COURT: I think he's trying to refresh his recollection.

03:17:30 MR. OAKES: Correct.

03:18:12 (Whereupon, there was a pause in the proceeding.)

03:18:21 **A.** Okay, I've reviewed that.

03:18:22 **Q.** Does reviewing of that refresh your recollection, Mr. Walsh?

03:18:26 **A.** The reporter in that cites "they" as both Joseph Fahey and myself. I don't recall. I don't -- that doesn't refresh my recollection, and it may have been Joseph Fahey that -- that was speaking there. I -- I don't remember.

03:18:47 **Q.** Mr. Walsh, if I can have that exhibit back please. Mr. Walsh, how would you describe your working relationship with Attorney Fahey at that time in December of ninety-four?

03:19:08 MS. BIANCO: Objection to the relevance of their working relationship.

03:19:10 THE COURT: Yeah. I'm not sure where we're going with this, Mr. Oakes. Get to a point quickly because you seem to want the Court to leap and say if Mr. -- if Mr. Walsh did it this way, Mr. Fahey should have done it that way. It's not a fair comparison.

03:19:49 **Q.** Mr. Walsh, would you agree that as to whether Heidi Allen was a confidential informant or not would be important to both Richard Thibodeau's case and Gary Thibodeau's case?

03:19:59 MS. BIANCO: Objection, leading, and objection

03:20:01 to what's important in Gary Thibodeau's case. So two
03:20:04 separate objections please.

03:20:07 THE COURT: I'll sustain it.

03:20:10 **Q.** What significance if any would you have placed upon
03:20:18 Heidi Allen being a confidential informant in your
03:20:21 representation of Richard Thibodeau?

03:20:22 MS. BIANCO: Objection to the significance of
03:20:24 Richard Thibodeau trial.

03:20:26 THE COURT: I'll allow it.

03:20:27 **A.** I'd certainly be interested in that. I'd be
03:20:29 interested in anything that affected Richard's trial, any
03:20:32 information.

03:20:33 **Q.** And if you had learned of that information prior to
03:20:37 Gary Thibodeau's trial, would you have shared that with
03:20:40 Attorney Fahey?

03:20:41 MS. BIANCO: Objection, speculative, if the
03:20:43 question is did he.

03:20:45 THE COURT: I'll sustain it.

03:20:50 **Q.** What if any conversations did you and Attorney Fahey
03:20:56 ever have regarding Heidi Allen's status as a confidential
03:21:00 informant if you recall?

03:21:02 MS. BIANCO: Objection to the foundation when
03:21:04 these conversations would have occurred.

03:21:05 THE COURT: Give us a when.

03:21:07 THE WITNESS: Twenty years ago?

03:21:09 **Q.** Twenty years ago. Yes. Twenty years ago prior to
03:21:13 Gary Thibodeau's trial, what if any conversations would you
03:21:18 have -- did you and Attorney Fahey have regarding Heidi
03:21:22 Allen's status as a confidential informant that you recall?

03:21:25 **A.** I really can't recall.

03:21:27 **Q.** So they may have occurred, but you just don't
03:21:31 remember at this time, Mr. Walsh, is that fair?

03:21:33 **A.** That's fair.

03:21:48 MR. OAKES: No further questions, Your Honor.

03:21:51 THE COURT: Ms. Bianco.

03:21:53 MS. BIANCO: Yes, please, Judge. I'm just
03:21:58 going to get a couple of the exhibits before we start.

03:22:01 THE COURT: Okay.

03:22:15 MS. BIANCO: I'm looking for eleven and 11-A.

CROSS-EXAMINATION
03:22:36 BY MS. BIANCO:

03:22:37 **Q.** Good afternoon, Bill.

03:22:42 **A.** Good afternoon.

03:22:44 **Q.** Now you represented Richard Thibodeau in 1994 and
03:22:49 1995, is that correct?

03:22:50 **A.** Correct.

03:22:51 **Q.** And you handled many cases as a lawyer after that,
03:22:55 is that right?

03:22:56 **A.** I would believe so.

03:22:58 **Q.** And when you took the bench, you handled hundreds if

03:23:02 not thousands of cases during the time on your -- on the
03:23:06 bench, is that right?

03:23:06 **A.** I believe I was a judge at the time. I was a town
03:23:08 judge in the Town of Geddes.

03:23:10 **Q.** Oh, so besides the Town of Geddes, you handled
03:23:13 hundreds of cases in the Town of Geddes, correct?

03:23:16 **A.** Correct.

03:23:16 **Q.** And when you were a County Court Judge, you handled
03:23:19 hundreds if not thousands of cases while you were on the
03:23:22 bench.

03:23:22 **A.** I believe that's correct.

03:23:23 **Q.** Would it be fair to say that your -- your memory in
03:23:27 this matter is -- is diminished after more than twenty
03:23:31 years? Would that be a fair statement?

03:23:32 **A.** I can't remember if I brushed my teeth this morning.

03:23:36 **Q.** Now on direct examination you talked about creating
03:23:44 separate files for all of the people listed in the lead
03:23:48 sheets. Do you remember that testimony?

03:23:49 **A.** Well, not just the lead sheets, any -- any police
03:23:52 report, anything that I obtained there were -- there were
03:23:56 files for.

03:23:56 **Q.** Did you put the dates you received the police
03:24:00 reports or the lead sheets or the information on those
03:24:03 documents?

03:24:04 **A.** I -- I don't think so. I don't believe I did. I

03:24:10 didn't realize this would come up twenty years later.

03:24:13 **Q.** Showing you what's been marked Defendant's Exhibit
03:24:17 11, on page two, you see two date stamps on that?

03:24:25 **A.** Yes, I do.

03:24:26 **Q.** And one says May sixteenth, 1995, correct?

03:24:31 **A.** Correct.

03:24:32 **Q.** That would be the District Attorney's Office stamp?

03:24:34 **A.** Yes, ma'am.

03:24:34 **Q.** And the other says May twenty-third, 1995, correct?

03:24:38 **A.** Correct.

03:24:39 **Q.** Would it be fair to say that you couldn't have
03:24:41 received those documents before those dates?

03:24:46 **A.** I couldn't tell you. I -- I just don't know when I
03:24:50 received them.

03:24:50 **Q.** Okay. With regards to Exhibit 11-A, I'm showing you
03:25:12 page three where there is a picture of a young girl, a
03:25:17 sheriff's card and some information. Do you know if you
03:25:22 ever received that particular piece of information?

03:25:28 THE COURT: Clarification. Just page three?

03:25:31 MS. BIANCO: Page three which is the
03:25:32 confidential identity card, the fingerprints and the
03:25:37 information about her background.

03:25:38 **A.** I don't recall this. I really don't recall if I
03:25:46 received this or not. The other reports I've reviewed are
03:25:51 familiar but this one is not.

03:25:54 **Q.** Would it be fair to say that you can't be certain whether you received the Exhibits 8, 9 and 10 which was the Lortie, Montgomery and Kleist report, that you don't know if you had those before Gary Thibodeau's trial, would that be fair?

03:26:15 **A.** That question kind of branched out there. Whether I remember the reports or the dates or --

03:26:21 **Q.** The Sergeant Roy Lortie report which was Exhibit 5, I believe you testified on direct examination that you weren't --

03:26:29 **A.** Is that -- would that be associated with Exhibit M as in Mike?

03:26:34 **Q.** I wish you didn't ask me that question.

03:26:48 **A.** If you could just show me the document I think that would be sufficient.

03:26:52 **Q.** Certainly. I'm going to look at eight, nine and ten and eleven first which are up there.

03:27:02 THE COURT: You just showed him eleven.

03:27:05 **Q.** Yes, I showed you eleven, and you don't know whether or not you received that prior to Gary Thibodeau's trial, is that fair?

03:27:12 THE COURT: No. He answered he was not sure if he received it prior to May sixteenth.

03:27:17 MS. BIANCO: Okay.

03:27:30 **Q.** Let me show you what's been marked Defendant's

03:27:32 Exhibit 8 first which was the Montgomery report. Can you
03:27:41 state with certainty whether or not you received that prior
03:27:46 to Gary Thibodeau's trial?

03:27:48 **A.** I can't say with certainty that I received it at
03:27:52 all.

03:27:52 **Q.** Thank you, sir. Defendant's Exhibit 9, the
03:27:58 VanPatten report, can you state whether you received that
03:28:00 report?

03:28:03 **A.** Not to the degree of certainty that require -- I
03:28:07 can't say a hundred percent, but I will add that the
03:28:11 transcript of the trial would be dispositive of that issue.

03:28:15 **Q.** Thank you. Showing you Defendant's Exhibit 10, I
03:28:19 apologize but the same question, do you know if you
03:28:24 received that document?

03:28:27 **A.** Same answer.

03:28:29 **Q.** Okay.

03:28:29 **A.** Can't be absolutely certain.

03:28:32 **Q.** Showing you what's been marked Defendant's Exhibit
03:28:52 44 which was a punch card.

03:28:54 THE COURT: Is it 144?

03:28:56 **Q.** 144 which is a punch card, do you recall whether or
03:29:00 not you ever received this particular document?

03:29:05 **A.** No, I don't recall this.

03:29:10 **Q.** You don't recall ever receiving that one or --

03:29:13 **A.** I can't say for certain but I don't think I received

03:29:16 it.

03:29:17 **Q.** Thank you, sir.

03:29:23 MS. BIANCO: I have no further questions.
03:29:25 Thank you.

03:29:26 THE WITNESS: Thank you.

03:29:27 THE COURT: Mr. Oakes?

03:29:35 MR. OAKES: No further questions, Your Honor.

03:29:37 THE COURT: You do?

03:29:38 MR. OAKES: No.

03:29:39 THE COURT: No further questions.

03:29:40 MR. OAKES: No, thank you.

03:29:41 THE COURT: Mr. Walsh, please step down.
03:29:45 Thank you. I'm assuming next is Donald Dodd.

03:29:55 MR. MOODY: He would be our next witness.

03:29:56 THE COURT: He's been here most of the day.
03:29:59 It's after three o'clock. You know I'm going to have
03:30:01 to shut down at four.

03:30:03 MR. MOODY: Can we approach?

03:30:04 THE COURT: What is it?

03:30:06 MR. MOODY: Are you talking about kicking him
03:30:07 over till tomorrow morning?

03:30:08 THE COURT: Yeah, starting at 8:45, or do you
03:30:10 want to start him now? It's up to you guys. I'm
03:30:13 completely flexible.

03:30:14 MS. PEEBLES: I'd rather forge ahead, Judge.

03:30:16 MR. MOODY: That's fine. We'll at least get
03:30:18 him started today.

03:30:19 THE COURT: That's fine.

03:30:20 MS. BIANCO: I want to return the evidence
03:30:23 before --

03:30:23 THE COURT: Before you take it.

03:30:25 MS. BIANCO: Before I take it and it gets
03:30:27 lost.

03:30:28 THE COURT: Who is going to direct Mr. Dodd?

03:30:30 MR. MOODY: I am, Judge.

03:30:39 THE COURT: All attorneys understand we shut
03:30:41 down at four o'clock.

03:30:50 THE CLERK: Raise your right hand, put your
03:30:58 left on the Bible.

03:30:59 DONALD DODD, Called as a witness, having been duly
03:31:00 sworn, was examined and testified as follows:

03:31:03 THE CLERK: Please state your name for the
03:31:08 record.

03:31:08 THE WITNESS: Donald H. Dodd.

03:31:10 THE CLERK: Spell your last name.

03:31:11 THE WITNESS: D-O-D-D.

03:31:13 THE CLERK: Thank you.

03:31:13 THE WITNESS: Thank you.

03:31:14 THE COURT: Mr. Dodd, before any questions
03:31:16 begin, I have to ask you whether or not you consent to

03:31:18 having your testimony audio and video taped.

03:31:22 THE WITNESS: I do so consent, Judge.

03:31:24 THE COURT: Thank you.

03:31:25 MR. OAKES: Excuse me, Your Honor. May I
03:31:26 check with the witness? Mr. Dodd, is there a piece of
03:31:30 paper on the witness stand? Did I leave something
03:31:31 there?

03:31:32 THE WITNESS: No.

MR. OAKES: Okay.

03:31:35 DIRECT EXAMINATION

03:31:35 BY MR. MOODY:

03:31:36 **Q.** Are you currently employed, sir?

03:31:39 **A.** Yes, sir. I'm currently employed in private
03:31:41 practice here in Oswego County as an attorney.

03:31:44 **Q.** Besides being an attorney in private practice, do
03:31:46 you do anything else?

03:31:47 **A.** Serve as a town judge in the Town of Oswego.

03:31:51 **Q.** How long have you been the town judge in the Town of
03:31:54 Oswego?

03:31:54 **A.** 1/1, 2014 to today's date.

03:31:55 **Q.** So a little over a year?

03:31:58 **A.** Yes.

03:32:01 **Q.** When did you enter private practice?

03:32:03 **A.** 1984.

03:32:05 **Q.** When did you enter private practice most recently?

03:32:08 **A.** The end of 2011 when I left the Oswego County District Attorney's Office and 2012 I entered into private practice.

03:32:18 **Q.** You said that you left the Oswego County District Attorney's Office. What was your position or title with the Oswego County District Attorney?

03:32:25 **A.** I initially started as a chief assistant DA in 1985 and thereafter I ran for the elected position of district attorney. I was elected and starting service in 2004, elected for two terms, served eight years as DA in Oswego County.

03:32:40 **Q.** So from 2004 to 2011?

03:32:42 **A.** Yes, sir.

03:32:42 **Q.** I want to direct your attention to 1994 in particular. At some point in time did you become involved in or have responsibility for the case involving the disappearance and abduction of Heidi Allen?

03:32:58 **A.** Both involved in and participated in, yes.

03:33:01 **Q.** What was your role?

03:33:02 **A.** I was assigned by the district attorney at the time James Gross as an assistant DA in Oswego County to work and collaborate with the Oswego County Sheriff's Department to assist them in any fashion they deemed necessary for the purposes of furthering their criminal investigation, and in the event the facts led to an arrest and charges, to

03:33:21 ultimately prosecute the individual or individuals charged.
03:33:24 **Q.** And was somebody or was one or more persons
03:33:27 eventually arrested?
03:33:28 **A.** Two persons were charged, Gary Thibodeau and Richard
03:33:31 Thibodeau, with the kidnapping of Heidi Allen.
03:33:34 **Q.** And were you responsible for both of their cases
03:33:36 once an arrest was made?
03:33:37 **A.** Exclusively responsible, yes, sir.
03:33:40 **Q.** During the course of your duties as the trial
03:33:58 assistant for the case, did you become familiar with the
03:34:01 contents of the file?
03:34:02 **A.** I did.
03:34:03 **Q.** And can you describe it for me please?
03:34:05 **A.** By the file, you mean the Oswego County Sheriff's
03:34:09 Department investigation file?
03:34:10 **Q.** Yes.
03:34:11 **A.** Well, first it was very voluminous. It was a large
03:34:14 file and it was made up of different component parts.
03:34:18 First component part would be the Oswego County Sheriff's
03:34:22 Department component part which would be specific reports
03:34:26 that individuals that were sheriffs would have prepared
03:34:28 whether it be a typed report or handwritten report, notes,
03:34:34 lead sheets. In addition to that portion of the file there
03:34:39 were also different police agencies that assisted the
03:34:43 Sheriff's Department as part of the overall investigation,

03:34:45 and the complete file consisted of reports from different
03:34:51 police agencies whether in New York State or out of state.
03:34:53 Also reports from the Federal Bureau of Investigation.
03:34:57 There were many additional component parts which included
03:34:59 witness statements that may have been obtained at different
03:35:02 stages, physical evidence that was made part of the overall
03:35:06 investigation, photographs, videotapes, recordings.

03:35:10 **Q.** And during the course of the -- your handling of the
03:35:15 case, did you review all of those documents and all of
03:35:18 those other -- the video tapes and other things?

03:35:20 **A.** Every piece of paper that was part of that
03:35:24 investigation, I personally inspected. Every piece.

03:35:28 **Q.** If you know, approximately how many lead sheets were
03:35:32 there?

03:35:32 **A.** The approximate number of leads that were evidenced
03:35:37 in lead sheets was in excess of fifteen-hundred which --
03:35:40 leads.

03:35:42 **Q.** You said that you retired from the Oswego County
03:35:46 District Attorney's Office in, well, January first of 2012,
03:35:51 is that right?

03:35:51 **A.** Technically 12/31, 2011.

03:35:54 **Q.** And since that time, since you left the District
03:35:59 Attorney's Office, have you had any access to the Heidi
03:36:03 Allen file without a member of the District Attorney's
03:36:06 Office, current member of the District Attorney's Office

03:36:08 being present?

03:36:09 **A.** No access other than with the physical presence of 03:36:11 either assistant DA or the DA or some member of the Oswego 03:36:16 Sheriff's Department.

03:36:17 **Q.** Now, once an arrest was made I assume an indictment 03:36:21 was obtained?

03:36:21 **A.** The Grand Jury -- I presented the evidence to the 03:36:25 Grand Jury, true bill indictment was voted as it relates to 03:36:28 both Gary Thibodeau and Richard Thibodeau, yes.

03:36:32 **Q.** And at some point in time motions and discovery 03:36:35 began?

03:36:35 **A.** Yes.

03:36:35 **Q.** Did you in conjunction with anyone else establish a 03:36:40 procedure to make sure that all the documents that were 03:36:41 contained in the Oswego County District Attorney's file, or 03:36:45 excuse me, Oswego County Sheriff's Department file turned 03:36:48 over to the attorneys for Richard and Gary Thibodeau?

03:36:51 **A.** I did, sir. I alone created the system and the 03:36:54 structure that was utilized at all stages as it relates to 03:36:58 statutory discovery being identified and turned over and 03:37:03 also any and all Brady material.

03:37:04 **Q.** Now, were you familiar or do you remember who the 03:37:07 attorneys were for, well, let's start with Gary Thibodeau?

03:37:11 **A.** Absolutely. That would be Attorney Joseph Fahey.

03:37:12 **Q.** And who was the attorney for Richard Thibodeau?

03:37:15 **A.** That would be Attorney William Walsh.

03:37:17 **Q.** And did you have conversations with them about
03:37:20 that -- how things would be handled as far as discovery?

03:37:24 MS. BIANCO: Objection as to conversations
03:37:26 with them. When, who.

03:37:29 THE COURT: Be a little bit more specific.

03:37:30 **Q.** After indictments, when the discovery process began,
03:37:34 what did you do to -- to relay them their -- the
03:37:39 availability of documents in the file?

03:37:41 **A.** As to both attorneys Fahey and Walsh, I spoke with
03:37:45 them on a routine and regular basis relative to the case.
03:37:51 Thereafter, I created a structure wherein the People would
03:37:55 respond to CPL 240.20 discovery demand and also demands for
03:38:01 any Brady information or material. The way that I
03:38:05 addressed that with both counsel was to first make
03:38:09 available for both attorneys Fahey and Walsh the
03:38:14 opportunity to physically come to the District Attorney's
03:38:17 Office and inspect all of the file. First part of it was
03:38:22 that they could come to the DA's office and inspect all
03:38:25 portions of the investigation file, and that was extended
03:38:28 to both attorneys Fahey and Walsh.

03:38:30 **Q.** We'll get to that in a minute. Let's start and move
03:38:33 back to the procedure that you mentioned that you
03:38:35 established for 240.20 material. Can you describe that for
03:38:38 us?

03:38:38 **A.** Yes. By way of foundation, the volume of material was the most that I'd ever seen up until that date, and even after practicing many years in the DA's Office, it continued to be the most volume of material I'd ever seen, so I created a structure that would be systematic, organized and verifiable. The structure that I put in place and required people to follow had to do with the manner in which we were going to accurately photocopy all aspects of the file and insure that we could verify that we had photocopied and turned over to counsels Fahey and Walsh that portion of the file. Specifically, the form that it took would be that myself, working in conjunction with Investigator Terrence Whipple, assigned the case by Sheriff Nellis at the time, that all portions of the original file that were to be reproduced, we had a series of counting myself, eleven individuals that would be requested to make photocopies of a portion of the file. The original --

03:39:47 MS. BIANCO: Objection, Judge. Can we get a time frame when this is supposed to happen?

03:39:52 THE COURT: Well, I'm assuming it's during the entire --

03:39:56 MS. PEEBLES: I think we need a specific time period.

03:39:59 THE COURT: It's post-indictment to when? Let's break it down.

03:40:02 **Q.** Do you know approximately when you would have
03:40:03 established this procedure?
03:40:05 **A.** December of 1994.
03:40:06 **Q.** And this procedure would have continued then through
03:40:12 the entirety of both Richard's trial and Gary's trial?
03:40:15 **A.** Yes.
03:40:15 **Q.** So going back, you -- you started to explain the
03:40:20 procedure?
03:40:20 **A.** The procedure that was utilized was that the
03:40:24 original Sheriff's Department investigation file had a
03:40:28 series of component parts, and that individuals that were
03:40:33 tasked to making reproductions were given a portion of the
03:40:37 original file and then directed and requested by me or
03:40:41 Investigator Whipple to make three exact reproductions of
03:40:47 everything that was in the original portion of the file
03:40:50 that was given to them. After they made the three exact
03:40:54 reproductions, each of those reproductions went into a
03:40:58 separate file box, box one, two and three, one for Attorney
03:41:02 Fahey, one for Attorney Walsh, and the other was the file
03:41:06 copy to submit it to the Oswego County Court.
03:41:08 **Q.** When you say the Oswego County Court, who would have
03:41:11 been the judge at the time?
03:41:12 **A.** There were a series. It was either Judge Brandt at
03:41:16 the time or Judge Clary. I can't recall precisely. Judge
03:41:21 Clary was the trial judge in both matters.

03:41:23 **Q.** If Judge Clary was the trial judge, Judge Brandt
03:41:28 would have been before Judge Clary?

03:41:30 **A.** Yes. The way that we verified that the documents
03:41:34 were reproduced because that was part of the plan that I
03:41:36 had put in place to make sure I could verify that
03:41:38 everything was reproduced and photocopied is that everyone
03:41:43 who made photocopies of the original had to mark with green
03:41:46 ink on the original file that was handed to them, and then
03:41:51 the component parts that would be paper that would be
03:41:54 inside that part of the file, and if it were stapled
03:41:59 together, it would be the face sheet, but there was a
03:42:01 requirement that anybody who was reproducing that portion
03:42:04 of the file had to mark in green ink the original documents
03:42:09 so that I could verify that it had been reproduced in its
03:42:26 entirety.

03:42:26 **Q.** Now you mentioned that there were three boxes and
03:42:29 one went -- I just want to be clear, one went to the --
03:42:32 we'll call it box one, the first box, would have gone to
03:42:35 whom?

03:42:35 **A.** Well, I --

03:42:37 **Q.** Let's put it this way. What were the three boxes
03:42:40 for?

03:42:40 **A.** The three boxes were to make sure that we had a
03:42:43 complete reproduction of everything that was part of the
03:42:47 Oswego County Sheriff's Department investigation in three

03:42:50 separate boxes. Ultimately one complete box went to Attorney Fahey, one complete box went to Attorney Walsh, one complete box went to the Oswego --

03:42:59 THE COURT: Ma'am, in the front row with the sweater on, I can hear you, okay. Please be quiet. Go ahead.

03:43:05 **A.** To the Oswego County Court.

03:43:07 **Q.** Okay, when you say one box, was the file contained in a single box?

03:43:14 **A.** Absolutely not. It -- ultimately when the initial completion of making photocopies of the file was completed, there were five individual boxes that made up one copy, so five boxes would have gone to Attorney Fahey, five boxes would have gone to Attorney Walsh, five boxes went to Oswego County Court, and by boxes, I mean using as an exhibit in court the file boxes on your table, that would be about the box that we used, five of those.

03:43:47 **Q.** And those five boxes, that would have been the file as it existed at what point in time if you remember?

03:43:52 **A.** During the period of time that it was being reproduced, it was up until the particular point, and then thereafter I had a different procedure to insure that any additional material that was received after we completed reproduction of the first component part, that we would reproduce the second component part, that the first part of

03:44:15 the reproduction was concluded before December fourteen,
03:44:20 1994.

03:44:21 **Q.** So the first component part would have been, just so
03:44:25 I'm clear, within the five boxes?

03:44:27 **A.** Yes.

03:44:28 **Q.** And what was the procedure after that?

03:44:29 **A.** The procedure that I put in place, and I was the
03:44:34 person that oversaw this working in conjunction with
03:44:36 Investigator Whipple, that after the completion of the
03:44:40 first reproduction through December fourteenth, thereafter
03:44:45 all, all additional documents that were received by the
03:44:50 Oswego County Sheriff's Department or the DA's Office would
03:44:54 go to Investigator Whipple in an in-box and they would be
03:44:59 date stamped, and then subsequently after a portion of them
03:45:05 had been developed, I would make additional photocopies
03:45:11 using the same exact procedure which never changed so that
03:45:16 it would be additional discovery after the first discovery
03:45:20 disclosure of 240.20 and Brady material, and I've continued
03:45:24 that procedure through the entirety of the matter.

03:45:26 **Q.** And that procedure, when you speak of that, that's
03:45:29 the green mark?

03:45:30 **A.** Yes, sir.

03:45:31 **Q.** Okay, I want to show you what's been marked and
03:45:33 received as People's Exhibit MMM and ask you if you
03:45:36 recognize that.

03:45:37 **A.** I do.

03:45:42 **Q.** What is that?

03:45:43 **A.** This is an original DA's office file memorandum that
03:45:47 I created myself. The date of the memorandum is December
03:45:51 fifteen, 1994 regarding Gary Thibodeau and Richard
03:45:55 Thibodeau, and it sets forth the procedures that I've
03:45:58 testified to here in court that I explained to each of the
03:46:02 individuals that were tasked to making the reproductions,
03:46:06 and it identified the procedure to be followed by everyone
03:46:10 that was explained by me to each of the persons, and then
03:46:14 thereafter on page two of the document, each of the
03:46:17 individuals that made photocopies in conformity with the
03:46:22 procedure identified signed their signature in -- original
03:46:26 signature of those individuals.

03:46:28 **Q.** Okay, and do you recognize those signatures?

03:46:33 **A.** Actually, yes.

03:46:33 **Q.** Is your signature on that as well?

03:46:35 **A.** It's the bottom one on page two, yes, sir.

03:46:38 MR. MOODY: Judge, while we're at this point,
03:46:45 former District Attorney Dodd has testified that these
03:46:48 materials were copied and sent to the Court. It's my
03:46:50 understanding in speaking with the court personnel
03:46:52 that -- that if -- if those things exist, they can't
03:46:56 give out those, the DA's office, access to it. What I
03:46:59 would ask if it's possible if the Court could inquire

03:47:03 whether those documents exist and whether there's any
03:47:06 box or boxes of discovery that were turned over by DA
03:47:09 Dodd. Obviously our feeling is the importance of this
03:47:12 would be if they are in the Court's file, these
03:47:13 disputed documents are in the Court file, that would be
03:47:17 significant evidence that they were in fact turned over
03:47:18 to all parties concerned.

03:47:21 THE COURT: Ms. Peebles, Ms. Bianco?

03:47:24 MS. PEEBLES: Judge, I don't have any
03:47:26 objection. In fact, we would welcome the Court's file.
03:47:29 It's not dispositive of whether or not those documents
03:47:31 were turned over to Judge Fahey. Moreover, we don't
03:47:35 know whether the Court actually reviewed the documents.
03:47:37 They could have been a duplicate copy of perhaps when
03:47:40 Mr. Walsh got his boxes or perhaps not. I don't know
03:47:44 what the relevance would be.

03:47:46 THE COURT: Well, I see the relevance kind of,
03:47:47 it's, you know, test the credibility of Mr. Dodd, Mr.
03:47:50 Walsh, Mr. Fahey, et cetera. It goes into that. I
03:47:54 could inquire where the boxes are. I certainly don't
03:47:57 know where they are. I was not --

03:47:58 MS. PEEBLES: I don't have any objection to
03:48:00 that of course.

03:48:00 THE COURT: Okay.

03:48:02 MR. MOODY: Following up with that because

03:48:03 Judge Clary which was a Jefferson County Court Judge,
03:48:06 if you could also either reach out to -- I don't know
03:48:08 if Judge Clary took anything to Jefferson County.

03:48:11 THE COURT: I'll inquire as to what the status
03:48:14 is of the boxes that were produced prior to December
03:48:16 fourteenth, 1994 which Mr. Dodd identified as the first
03:48:20 original -- original file, and then what came to the
03:48:22 court after that prior to Gary Thibodeau's trial.

03:48:26 MS. PEEBLES: Absolutely.

03:48:27 THE COURT: I will inquire from Sonya, I guess
03:48:30 she'd --

03:48:31 MS. PEEBLES: I just would note, I would note
03:48:33 that during the hearing, if we're going to make this
03:48:36 argument now on the record, during the hearing of
03:48:38 December eighth, Judge Fahey specifically asked for the
03:48:43 Court to review the boxes and the material for Brady.

03:48:45 THE COURT: Correct and, there is information,
03:48:47 there is a written decision from Judge Gilbert. I
03:48:51 remember reviewing it.

03:48:52 MS. PEEBLES: And in fact they basically
03:48:53 denied the request so I just state that for the record.

03:48:57 THE COURT: They denied what request?

03:48:58 MS. PEEBLES: The judge -- the judge denied
03:49:00 his request to review the material, the Brady material.
03:49:03 He actually made --

03:49:04 THE COURT: If you read Judge Gilbert's
03:49:07 decision, he denied it was Brady material.

03:49:10 MS. BIANCO: There was the December eighth
03:49:11 argument. Judge Fahey had a People versus Bottoms
03:49:14 inquiry, and at that point Judge Brandt specifically
03:49:17 said I am not going to review each piece of material
03:49:22 specifically to determine whether or not there's Brady
03:49:24 material that has to be turned over to the defense.
03:49:29 That was in the December eighth transcript, Judge.

03:49:31 THE COURT: Okay, I guess I was thinking of
03:49:34 the wrong transcript. I was thinking of Gilbert's
03:49:36 decision, I apologize.

03:49:37 MS. PEEBLES: I don't know who Gilbert is.

03:49:39 THE COURT: Judge Gilbert trial, was a trial
03:49:42 attorney.

03:49:42 MR. MOODY: Judge, on that line, I would also
03:49:43 note that during that transcript, during that court
03:49:44 appearance, Judges Brandt acknowledges getting box or
03:49:49 boxes so --

03:49:49 **Q.** Moving forward, you mentioned that this procedure
03:49:54 was in addition to inviting attorneys Fahey and attorneys
03:49:59 Walsh, now Judge Fahey and Judge Walsh up to review the
03:50:02 file. To your knowledge did Judge Fahey ever come to
03:50:05 review the file?

03:50:06 **A.** In fact he did, sir, on two specific occasions. And

03:50:10 this was to make available to Attorney Fahey and Walsh, and 03:50:13 I refer to him as Attorney Fahey and Walsh merely because 03:50:16 that's how I thought of them at the time. Both attorneys 03:50:18 Fahey and Walsh did physically come to the District 03:50:22 Attorney's Office consistent with their obligation under 03:50:24 240.20 and also to disclose Brady material. We made 03:50:28 available all of the Sheriff's Department investigation 03:50:32 file for Attorney Fahey. Specifically on two occasions he 03:50:36 personally came to the DA's office where the file was kept 03:50:39 at that time, December fourteen, 1994 and March fourteen, 03:50:44 1995. December fourteen, 1994 I met with him, set forth 03:50:53 the procedure, described it to him for the purposes of 03:50:57 assisting his ability to review all aspects of the file 03:51:04 which was a very large file. Towards that end, I requested 03:51:08 Investigator Terrence Whipple to be in the room with 03:51:11 Attorney Fahey, answer any and all questions that were 03:51:15 asked of him, to make available all of the file to Attorney 03:51:20 Fahey, that if Attorney Fahey wanted to make reproductions, 03:51:24 photocopies of any documents at that time, to do it. If he 03:51:28 wanted to inspect photographs, to make them available. If 03:51:31 he wanted to listen to audio tapes, to make them available, 03:51:34 and that occurred on -- initially occurred on December 03:51:37 fourteen, 1994. Thereafter, March fourteen, 1995, on a 03:51:43 second occasion at least, and there may have been an 03:51:46 additional one but I know of two for sure. March fourteen, 03:51:49 1995 Attorney Fahey again came to the District Attorney's Office, followed the exact same procedure that he was taken into the room where we had the file and Investigator Whipple was also there. Again, following the same procedure, Attorney Fahey could review anything he chose to, wanted to review, and he could get copies of anything that he requested to have copies made of.

03:52:14 **Q.** Starting with the December event, did you -- did you do anything to document or record judge or Attorney Fahey's visit?

03:52:25 **A.** I did. As part of trying to make sure I had a system that was organized and verifiable, I created a file memo, yes, sir.

03:52:33 **Q.** I want to show you what's been marked as People's Exhibit III and ask if you recognize it.

03:52:40 **A.** I do.

03:52:41 **Q.** And what is that?

03:52:42 **A.** The first two pages would be a file memo that was prepared by me, it's dated December fourteen, 1994 from myself named regarding Gary Thibodeau and Richard Thibodeau. It's entitled statutory discovery, CPL 240.20. It outlines the options that I made available to Attorney Fahey in terms of how reproductions of any portion or all of the file would be made available to him, and I outlined different ways that it could proceed. Attorney Fahey

03:53:16 requested that he be provided a copy, a complete copy of 03:53:21 the Oswego County Sheriff's Department investigation. I 03:53:26 then asked Attorney Fahey if he would review this 03:53:29 particular document and acknowledge by signing it that he 03:53:32 was familiar with the contents of the document and further 03:53:35 that he acknowledged that he was receiving an exact 03:53:39 complete reproduction of the Oswego County Sheriff's 03:53:42 Department investigation report on 12/14, 1994. I signed, 03:53:46 he signed in my presence, and that's page two of the 03:53:50 document. Page three is a yellow piece of paper that's 03:53:53 stapled to it that seems to reflect some photographs that 03:53:57 are designated by number that apparently were made 03:54:03 available to Attorney Fahey at that time.

03:54:05 **Q.** Is that your handwriting on that?

03:54:06 **A.** It's not.

03:54:07 **Q.** Third page?

03:54:08 **A.** It is not.

03:54:09 **Q.** Do you recognize whose handwriting that is?

03:54:11 **A.** I can't testify reliably, no.

03:54:14 **Q.** Okay, thank you. And is this the original of -- of 03:54:19 that memo?

03:54:20 **A.** It is the original, yes.

03:54:21 MR. MOODY: Judge, showing Exhibit III to 03:54:25 defense counsel, I move to admit.

03:54:27 MS. PEEBLES: It's the same exhibit we

03:54:29 introduced which is Exhibit 12 so we're going to have
03:54:32 duplicates all over the place. I don't understand --

03:54:35 MR. MOODY: I didn't think twelve was in, I'm
03:54:36 sorry. I didn't believe twelve was in.

03:54:39 MS. PEEBLES: Twelve was in. I introduced it
03:54:41 and offered it.

03:54:43 THE COURT: We have twelve.

03:54:55 MR. MOODY: Do you have twelve?

03:54:56 MS. PEEBLES: It's in. I have it marked. I
03:54:59 introduced it through Judge Fahey. I have a file memo.
03:55:08 I have the discovery memo.

03:55:10 MR. MOODY: It is in, I apologize.

03:55:12 THE COURT: Twelve is already in. It's a
03:55:14 duplicate.

03:55:20 MR. MOODY: I apologize. To the extent that
03:55:31 I -- that I haven't -- I guess I had thought I had --
03:55:34 I'm offering Exhibit M, MMM, excuse me. I thought it
03:55:39 was in. I thought I put this in through Terry.

03:55:49 MS. PEEBLES: I don't have any objection to
03:55:52 Exhibit MMM.

03:55:54 THE COURT: M's moved in.

(People's Exhibit MMM was previously received
in evidence).

03:55:58 THE COURT: And folks, that's the end of the
03:56:00 day. It's three minutes to four. Again I'm not

03:56:03 allowed to go after four o'clock. We will reconvene at
03:56:06 8:45 in the morning. Thank you, Mr. Dodd.

03:56:10 THE WITNESS: Yes, sir.

(Conclusion of Proceeding).

* * *

CERTIFICATE

I, JENNIFER ADYDAN, an Official Court Reporter in and for the State of New York, Fifth Judicial District, do hereby certify that the foregoing is a true, complete and accurate transcript of my stenographic notes taken in the above-entitled matter and the whole thereof to the best of my ability.

Jennifer Adydan

Jennifer Adydan
Official Court Reporter

DATED: March 30, 2015

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF OSWEGO: CRIMINAL TERM:

---------------------------------------x

THE PEOPLE OF THE STATE OF NEW YORK

Indict. No.
94C-0161

- against-

HEARING
VOLUME 10

GARY THIBODEAU,

Defendant.

---------------------------------------x

Oswego County Courthouse
25 E. Oneida Street
Oswego, NY 13126

DATE: March 25, 2015

Before:

HONORABLE DANIEL R. KING
Acting County Court Judge

Appearances:

GREGORY S. OAKES, ESQ.
District Attorney, Oswego County
MARK M. MOODY, ESQ.
Chief Assistant District Attorney

OFFICE OF THE FEDERAL PUBLIC DEFENDER
BY: LISA PEEBLES, ESQ., Public Defender
RANDI JUDA BIANCO, ESQ., Assistant Public Defender
Attorneys for Defendant

Defendant is not present

08:32:42

INDEX TO WITNESSES

	Direct	Cross	Redirect	Recross
FOR THE PEOPLE:				
Donald Dodd	1631	1706	1847	--
FOR THE DEFENDANT:				
None				

INDEX TO EXHIBITS

	Identification	Evidence
FOR THE PEOPLE:		
SS. 6/5/95 documents	960	1690
QQQ. VanPatten note	1664	1668
RRR. 4/25/95 letter	1691	1693
SSS. Photo	1700	1701
TTT. Dodd notes	1702	--
UUU. File 15 Bohrer	1847	1850
VVV. File 15 Bort	1851	--
FOR THE DEFENDANT:		
142. 1/13/95 motion	--	1799
FOR THE COURT:		
3. 8/16/94 decision	1869	1869

08:42:42 THE COURT: Yes, go ahead.
08:42:43 MS. PEEBLES: Just a couple things, Judge. I
08:42:45 want to follow up a little bit on Mr. Bohrer. We filed
08:42:48 a motion previously with the Court in connection with
08:42:51 the ruling regarding the notes.
08:42:53 THE COURT: You will have a written decision
08:42:55 on that probably by Thursday.
08:42:57 MS. PEEBLES: Thank you.
08:42:57 THE COURT: Yep.
08:42:59 MS. PEEBLES: In addition to that, Judge, a
08:43:00 couple things. I spoke with Mr. Oakes, and he
08:43:02 indicates he's going to provide the Court with some
08:43:04 caselaw in opposition of having Catherine Schmitt
08:43:08 testify. I wanted to clarify a couple things or at
08:43:10 least make it clear on the record that she wasn't able
08:43:12 to testify yesterday in connection with the proffer
08:43:15 that we wanted her to provide the Court that we think
08:43:18 there is a modus operandi here that was very similar
08:43:21 and I just wanted to go down the list of things that we
08:43:25 think are -- are similar in terms of the --
08:43:27 THE COURT: The problem is I think you're
08:43:29 miss -- you're misstating Molineux for one thing,
08:43:31 Molineux is defendant specific, not third party
08:43:34 specific for one thing, and second, you're trying to
08:43:37 impeach your own witness which you know you're not

08:43:40 allowed to do. It's against Mr. Bohrer's penal
08:43:42 interest.

08:43:42 MS. PEEBLES: Judge, again, I would go to the
08:43:44 matter of my client having a right to present a defense
08:43:46 during trial.

08:43:47 THE COURT: I understand that, and Mr. Bohrer
08:43:48 is not a defendant, okay, and I think your argument is
08:43:50 misplaced, Ms. Peebles. With all due respect, I think
08:43:54 your reliance on Molineux is misplaced because you're
08:43:57 saying to introduce a third party non-defendant, and
08:44:00 Molineux is clearly a defendant specific exception, and
08:44:04 Mr. Bohrer in your opinion is a defendant, but he's not
08:44:07 a named defendant, okay, so I'll let you put on the
08:44:11 record, but I just want to move forward with this
08:44:12 hearing. The fact of the matter is I think your
08:44:15 position on Molineux is misplaced. You're trying to
08:44:18 impeach your prior called witness which you know you're
08:44:21 not entitled to do under the rules of evidence and
08:44:24 that's exactly what you're trying to do.

08:44:25 MS. PEEBLES: Well, I disagree, Your Honor,
08:44:27 and first and foremost, I never called Mr. Bohrer a
08:44:29 defendant. In our view he was a potential suspect, and
08:44:33 in that regard, Your Honor, he has -- our argument is
08:44:37 in connection with my client's right to present a
08:44:39 defense, third party culpability with incriminating

08:44:43 statements that he made, which Mr. Bohrer himself
08:44:45 admitted to when he was -- when he talked about his
08:44:49 encounters with Tyler Hayes, he did not say that he
08:44:52 never made those statements, he testified specifically
08:44:55 that he actually made comments about Heidi Allen and
08:44:59 her whereabouts to Tyler Hayes.

08:45:01 Now in terms of -- and again, I'll go through
08:45:04 some of the similarities with Catherine Schmitt. There
08:45:07 was no financial motive. If she were permitted to
08:45:10 testify, she could have told the Court that she had a
08:45:12 purse on her, the purse was dropped on the parking lot,
08:45:15 she retrieved after they let her go and after they took
08:45:18 off. There was no financial motive. Obviously the
08:45:21 D & W, we know that because nothing was disturbed. She
08:45:24 had been lured by the suspect, Mr. Bohrer, and Heidi
08:45:29 Allen it appeared based on Mr. Pierce's testimony that
08:45:31 she had been lured, lured out of the store because she
08:45:35 was outside the store by the van. In that regard also,
08:45:38 Your Honor, she is between eighteen and twenty-one,
08:45:41 Heidi Allen was eighteen, she's a blonde female, long
08:45:44 hair.

08:45:44 THE COURT: I read this -- I read this in your
08:45:46 motion papers, okay, you're not stating --

08:45:47 MS. PEEBLES: I didn't have that in my motion
08:45:49 papers, Judge.

08:45:50 THE COURT: You said last night, yesterday morning, excuse me, about the similarities. What are we -- the Court will make a written decision, okay, and I'll have the written decision later on today if not tomorrow morning.

08:46:00 MS. PEEBLES: And I also want to clarify one other thing too for the record, Judge.

08:46:03 THE COURT: Okay.

08:46:04 MS. PEEBLES: I know the Court made a comment concerning Mr. Pierce's testimony. There were two people outside the store according to Pierce's testimony, two people involved in the abduction and the manner in which she was abducted, and it's our position that Mr. Bohrer was the second individual and Mr. Steen was one of the individuals involved also. Just to clear that up for the record.

08:46:25 THE COURT: Okay.

08:46:25 MS. PEEBLES: And also I think it's very important for the Court to consider the manner in which Ms. Schmitt was abducted similar to the way Heidi Allen was grabbed from behind, dragged and thrown in a vehicle. Thank you.

08:46:37 THE COURT: I appreciate that, but that's what you said yesterday as well, and I still think in my opinion that you have misplaced the application of

08:46:45 Molineux, but that's my opinion, you'll have my written decision hopefully later on today. Are you ready to go forward with Mr. Dodd?

08:46:52 MR. OAKES: Your Honor, and if I may on that issue, as the Court indicated yesterday, because we received the motion late on Friday or Friday, I wasn't able to provide a written response. Last night I looked at De Meo, the case the defense cited to you yesterday, I believe it's factually distinguishable, but I found some other cases that relate to third party culpability and Molineux. I hope to write up a memo to submit to the Court later today.

08:47:18 THE COURT: You can do a letter form. Any objection to letter form?

08:47:21 MS. PEEBLES: Letter's fine.

08:47:22 MR. OAKES: And I at least have those cases I wanted to give to defense counsel and provide to Mr. -- the Court and Mr. Lyndaker so Mr. Lyndaker could review it today.

08:47:32 THE COURT: Yeah, that's fine. Call your first witness.

08:47:34 MR. OAKES: Thank you, Your Honor.

08:47:39 MR. MOODY: The People would recall Donald Dodd.

08:47:58 THE CLERK: Raise your right hand, left on the

08:48:10 Bible.

DONALD DODD, Called as a witness, having been duly sworn, was examined and testified as follows:

08:48:13 THE CLERK: Please state your name for the record.

08:48:19 THE WITNESS: Donald H. Dodd.

08:48:22 THE CLERK: Thank you.

08:48:22 THE COURT: Mr. Dodd, I'm going to ask you again, sir, do you consent to having your testimony both video and audio taped?

08:48:27 THE WITNESS: Yes, sir, I do.

08:48:28 THE COURT: Thank you. Mr. Moody?

08:48:36 MR. MOODY: Thank you, Judge.

CONTINUED DIRECT EXAMINATION

08:48:38 BY MR. MOODY:

08:48:38 **Q.** When we left off yesterday, Mr. Dodd, you were speaking about Defendant's Exhibit 12 and which was the file memo that you were -- that you had done regarding Judge Fahey's visit in December of 1994.

08:48:55 MS. BIANCO: Judge, can we get Mr. Moody to wear the microphone?

08:48:59 THE COURT: I apologize.

(Whereupon, there was a pause in the proceeding).

08:49:52 THE COURT: Are you all set, Mr. Moody?

08:49:54 MR. MOODY: Yes, Judge. Apparently left my
08:49:56 pen somewhere.

08:49:57 **Q.** And I think we were into the point where I was
08:50:01 starting to ask you what you had provided in December of
08:50:05 1994 to Judge Fahey in relation to that memo, what exactly
08:50:10 had you given him, did you give him if you remember?

08:50:13 **A.** Yes.

08:50:14 **Q.** On the visit.

08:50:15 **A.** From my direct recollection first, that on December
08:50:19 fourteen, 1994, Attorney Fahey, Judge Fahey subsequently,
08:50:26 came to the District Attorney's Office. I met with him in
08:50:29 person at the District Attorney's Office. At that meeting
08:50:34 was Investigator Terrence Whipple who was tasked and
08:50:39 assigned to oversee the entirety of the Sheriff's
08:50:42 Department investigation report. On that date for several
08:50:45 hours, Attorney Fahey was allowed to inspect all of the
08:50:51 Oswego County Sheriff's Department investigation report
08:50:54 which was contained in a room within the District
08:50:58 Attorney's Office, it was made up of documents,
08:51:01 photographs, audio tapes. On that particular day, he was
08:51:06 provided a copy of the Oswego County Sheriff's Department
08:51:11 investigation report, a complete exact reproduction and
08:51:16 copy of all of the material that was in the Oswego County
08:51:20 Sheriff's Department investigation report on December
08:51:22 fourteen, 1994. The exhibit that you handed me, sir,

08:51:27 Exhibit 12, was the file memorandum that I prepared
08:51:33 describing the procedure.
08:51:34 **Q.** And you had Judge Fahey sign that?
08:51:37 **A.** I had Judge Fahey review it and read it and asked
08:51:41 him if he would sign it.
08:51:43 **Q.** And he did sign it?
08:51:44 **A.** He absolutely in my presence did, sir.
08:51:46 **Q.** And then did you -- do you remember how many boxes
08:51:49 you gave him?
08:51:50 **A.** Turned over to Attorney Fahey on that date would
08:51:54 have been five cardboard file boxes, yes.
08:51:56 **Q.** And did you at some point in time give -- give a
08:51:59 similar five boxes to Judge Walsh?
08:52:02 **A.** Attorney Walsh, then Judge Walsh, yes, he also
08:52:06 received the exact same items that --
08:52:10 MS. BIANCO: Objection to the non-responsive
08:52:12 nature of these questions. He's turning every question
08:52:14 into a giant narrative, Judge. He's not answering the
08:52:17 question. How many boxes. That's a simple question.
08:52:20 THE COURT: Limit your answer if you could,
08:52:23 sir.
08:52:25 **Q.** What did you give to Judge Walsh?
08:52:27 **A.** Five boxes containing the Oswego County Sheriff's
08:52:30 Department investigation report.
08:52:32 **Q.** Would those contents have been the same for both

08:52:36 Attorney Fahey and Attorney Walsh?

08:52:38 A. Identical in all respects.

08:52:40 Q. Do you remember when specifically you would have 08:52:43 turned those over to Attorney Walsh?

08:52:44 A. I don't have a recollection that's clear enough to 08:52:47 testify here. My recollection was it was prior to Attorney 08:52:51 Fahey receiving it but I -- I don't have a clear 08:52:53 recollection.

08:52:54 Q. I want to back up a couple of days to December 08:52:59 eighth of 1994. Do you -- have you reviewed the transcript 08:53:05 for that day?

08:53:05 A. Yes.

08:53:07 Q. Do you remember being in court that day 08:53:10 independently of that?

08:53:11 A. Yes.

08:53:11 Q. And what if anything came up with regard to Heidi 08:53:15 Allen's confidential informant status?

08:53:18 A. On December eighth, 1994, Oswego County Court before 08:53:22 Judge Brandt, Attorney Fahey, Walsh, myself were there 08:53:25 regarding the cases involving Gary Thibodeau and Richard 08:53:29 Thibodeau. It was -- we were on the Court's calendar for 08:53:32 pretrial issues. Specific to Heidi Allen, Attorney Fahey 08:53:37 at the time raised the issue of he had had received from 08:53:42 Attorney Walsh if memory serves correctly a report or 08:53:46 information indicating that Heidi Allen had provided

08:53:48 information as a confidential informant and that it was raised by Attorney Fahey at that time with an eye to a discovery demand or Brady demand.

08:53:58 **Q.** After that court appearance, what if anything did you do with regard to getting that information from the Sheriff's Department?

08:54:05 **A.** On the exact same day, December eighth, 1994, at a case review with the Sheriff's Department investigators who were principally tasked, I met with those investigators and specifically requested of them that they search the entirety of the Sheriff's Department file and record to determine and ascertain whether or not there was any documents indicating that Ms. Allen had at any time provided information as a confidential informant and/or was working as a confidential informant.

08:54:35 **Q.** And what if anything to your recollection did you -- did you get as a result of that meeting?

08:54:40 **A.** My recollection is that the next day which would be December ninth, 1994, received -- the District Attorney's Office received documents from either deputy or investigator, I can't recall what he was at the time, would have been Chris VanPatten, Michael Montgomery, Roy Lortie I believe, which was a description of Heidi Allen's having provided information as a confidential informant.

08:55:14 **Q.** Are you positive on those names, sir?

08:55:17 **A.** VanPatten, Mike Montgomery. Correction, Mike
08:55:24 Anderson.

08:55:25 **Q.** Rather than Roy Lortie?

08:55:27 **A.** Yes.

08:55:28 **Q.** Now, you said you received those the next day?

08:55:31 **A.** Yes.

08:55:32 **Q.** Can you describe what your process is or what your
08:55:37 process was in the Heidi Allen case specifically to
08:55:40 documents that you got and when you reviewed them how you
08:55:43 would -- what you would do when you reviewed them I guess
08:55:48 is what I'm asking.

08:55:49 **A.** Well, if it was a document that was received by the
08:55:53 District Attorney's Office, again, because we had to have a
08:55:56 system that was organized and verifiable, if it came to the
08:55:59 DA's Office, it was date stamped as received and date
08:56:03 stamped from the DA's Office. That would be whatever the
08:56:05 original document was that we received. Thereafter, my
08:56:09 procedure that I utilized at that time and continued for
08:56:12 years would be that I would never write on the original
08:56:15 document, but make a photocopy, an exact reproduction, and
08:56:19 then write on the top of the reproduction the words "my
08:56:23 copy" or "file copy" and then I would use that for the
08:56:25 purposes of reviewing the document and writing on it.

08:56:28 **Q.** Now with regards to the green mark that you talked
08:56:32 about yesterday, would it have been possible for documents

08:56:36 to have been copied twice and therefore have different green marks on them?

08:56:39 **A.** Yes.

08:56:40 **Q.** Why would that be?

08:56:40 **A.** To insure for my purposes that in fact the documents had been reproduced. There was a vast volume of documents. The reason that I put in place --

08:56:57 MS. BIANCO: Objection. Non-responsive, Judge.

08:56:58 THE COURT: Yeah. Ask a followup question.

08:57:03 **Q.** If -- I guess what I'm asking is could the same document have been copied at different times and therefore receive a different mark?

08:57:13 **A.** Yes. Well, not a different mark, but the color green was the color, and yes, it could be marked at multiple times.

08:57:20 **Q.** Now, I want to show --

08:57:24 MR. MOODY: Can I get this marked?

08:57:25 (People's Exhibit QQQ was marked for identification).

08:58:11 **Q.** I want to show you what's been marked as People's QQQ and ask you if you recognize that.

08:58:17 **A.** Yes, I do recognize it, sir.

08:58:25 **Q.** And what is that?

08:58:26 **A.** This would be a photocopy of three Sheriff's

08:58:33 Department investigation reports that were received by the
08:58:36 District Attorney's Office December nine, 1994. These
08:58:39 would be my work or file copies, and it's in my original
08:58:43 hand that I written "my copy" at the top and identify
08:58:51 certain issues set forth in the statements.

08:58:52 **Q.** You said that's your handwriting. Is that the
08:58:55 original copy that you handwrote on?

08:58:56 **A.** Yes.

08:58:57 **Q.** And how many pages is that document?

08:59:01 **A.** Three pieces of paper stapled together.

08:59:03 **Q.** And are those the three statements that you just
08:59:05 mentioned that you received after the December eighth
08:59:07 meeting with the Sheriff's Department?

08:59:08 **A.** Yes.

08:59:15 MR. MOODY: Judge, showing Defendant QQQ to
08:59:18 defense counsel, I would move to admit, Judge.

08:59:22 THE COURT: Ms. Bianco, Ms. Peebles?

08:59:25 MS. PEEBLES: Judge, there's the same
08:59:26 documents we have in evidence eight, nine and ten.

08:59:29 MS. BIANCO: And they're not relevant because
08:59:31 his handwriting on the documents doesn't mean they were
08:59:34 given to Attorney Fahey. As a matter of fact, the
08:59:37 documents that were turned over to Judge Walsh did not
08:59:41 have these writings on them. It's simply not relevant.

08:59:45 THE COURT: The distinction?

08:59:46 MR. MOODY: Judge, it's going to be very relevant when -- after it's admitted he can read from the document. The document -- he made notations about whether those documents were turned over to defense counsel on that document.

09:00:02 THE COURT: That's the distinction between defense eight, nine and ten.

09:00:05 MR. MOODY: Yes.

09:00:06 MS. PEEBLES: I don't see any -- I don't see any -- I don't see it so --

09:00:08 THE COURT: Do you want to voir dire, Ms. Bianco or Ms. Peebles?

09:00:11 MS. BIANCO: Yes, please.

VOIR DIRE EXAMINATION

BY MS. BIANCO:

09:00:17 **Q.** Mr. Dodd, when you wrote "my copy" on the top, you wrote that in red, correct?

09:00:22 **A.** I don't have the document in front of me but I defer if its color is red.

09:00:27 **Q.** Okay, and then you wrote something H-A Brady, is that right?

09:00:33 **A.** H-A --

09:00:34 **Q.** Brady.

09:00:34 **A.** Brady, yes.

09:00:35 **Q.** C-C T-O-T?

09:00:39 **A.** T-O-T, turned over to.

09:00:42 **Q.** And you don't have a date that that was turned over
09:00:45 on do you?

09:00:45 **A.** No.

09:00:47 **Q.** Okay, so you -- when you have this marking T-O-T is
09:00:57 it your -- that was your practice to right T-O-T on all the
09:01:03 documents that were turned over?

09:01:05 **A.** My practice on all of the documents?

09:01:08 **Q.** Right.

09:01:08 **A.** No, not on all of the documents, but again, that is
09:01:11 my work copy.

09:01:12 **Q.** Okay, on all your work copies, all of your work
09:01:15 copies would you write T-O-T, turned over, on all of your
09:01:20 work copies to defense counsel?

09:01:22 MR. MOODY: Judge, I think we're getting a
09:01:25 little far from voir dire, Judge.

09:01:27 THE COURT: I would agree.

09:01:31 MS. BIANCO: I'm sorry, Judge, I didn't hear
09:01:34 your ruling.

09:01:35 THE COURT: I would agree you're getting a
09:01:37 little far afield.

09:01:37 MS. BIANCO: I'm just asking him about this
09:01:39 T-O-T, if this is his system verifiable like he's
09:01:42 talking about, did you do this to all of your work
09:01:45 documents, T-O-T.

09:01:48 MR. MOODY: Well, Judge, that was the question
09:01:49 that I was objecting is a little far afield. That's
09:01:52 for cross.

09:01:52 THE COURT: I'm going to sustain the
09:01:53 objection.

09:01:53 MS. BIANCO: Well, I would -- I would object
09:01:54 to this if this is not his system, this is not his
09:01:57 practice, this is not dated, I would object.

09:01:59 THE COURT: It's more of a weight issue isn't
09:02:02 it than an admissibility issue?

MS. BIANCO: Well --

09:02:03 THE COURT: I'll allow it in.

(People's Exhibit QQQ was received in
evidence).

09:02:05 THE COURT: I mean you have the right to
09:02:06 challenge it when it goes in and further question the
09:02:09 witness, but if it's not dated, that is something the
09:02:12 Court's certainly going to consider.

09:02:14 MS. BIANCO: Thank you, Judge.

09:02:19 BY MR. MOODY:

09:02:19 **Q.** Showing you again Exhibit QQQ which is now admitted,
09:02:25 you were asked some questions now and some of them are
09:02:28 going to be a bit repetitive but you wrote some things on
09:02:31 the top of that. What exactly did you write?

09:02:33 **A.** In my hand, my copy, H-A.

09:02:36 **Q.** Let me just stop you there. H-A stands for what?

09:02:39 **A.** Heidi Allen.

09:02:40 **Q.** Okay, continue. What else did you write?

09:02:46 **A.** Brady, C-C, carbon copy, T-O-T, turned over to both 09:02:53 defense attorneys.

09:02:54 **Q.** Now, you wrote T-O-T, that obviously is an anagram, 09:03:00 not an anagram, initials I guess. If you had not turned it 09:03:03 over, would there have been a different notation on there 09:03:06 based on what you do with documents?

09:03:09 **A.** Well, it was turned over. I -- perhaps yes, but 09:03:13 I -- this was again a work product so that I knew what it 09:03:18 is that happened with these documents.

09:03:21 **Q.** Okay, and besides that, there's other writing on 09:03:23 there?

09:03:23 **A.** Yes. On page one of received QQQ in my hand there's 09:03:29 a highlighted in green ink and/or blue ink and/or pink ink 09:03:35 certain portions of Deputy VanPatten's report which was 09:03:39 received 12/9, 1994, page two, the same thing as to Deputy 09:03:43 Michael Anderson in either pink, blue or green. I put it 09:03:49 on these work copies, and as to the third portion of the 09:03:52 exhibit, received in either blue or green ink from Michael 09:03:58 Montgomery.

09:03:59 **Q.** And those were things that you -- you had noted that 09:04:02 were important to you other than turning this over.

09:04:03 **A.** Yes.

09:04:04 **Q.** Okay? And when you -- when you wrote Brady, why did
09:04:07 you write that on there?

09:04:09 **A.** Because potentially the content of the three
09:04:14 documents contained information or evidence property that
09:04:18 may tend to be exculpatory, Brady.

09:04:21 **Q.** Was there other material that you had noted in the
09:04:23 course of -- of reviewing the documents in this case that
09:04:26 you perceived to be potential Brady in nature that were
09:04:32 turned over?

09:04:32 **A.** Yes.

09:04:33 **Q.** Now, that's -- you said that was received by your
09:04:37 office on December ninth, the day after that, the
09:04:40 discussion in court. Do you have any idea or any
09:04:45 recollection whether or not that would have been in boxes
09:04:48 that were turned over to Judge Fahey on December
09:04:50 fourteenth?

09:04:50 **A.** In fact, those documents were turned over personally
09:04:55 by myself to Attorney Fahey on December fourteenth, 1994.
09:04:59 They were contained within the Oswego County Sheriff's
09:05:02 Department investigation report.

09:05:04 **Q.** Do you have any recollection after the indictment
09:05:11 of -- well, actually I'll ask it this way. Once Gary
09:05:14 Thibodeau was arrested and indicted, did you have
09:05:18 discussions with Attorney Fahey about the case at regular
09:05:21 times?

09:05:21 A. Yes, sir, on a fairly routine and regular basis, yes.

09:05:25 Q. Do you have recollections of discussing with him Heidi Allen's status as a confidential informant?

09:05:31 A. Yes.

09:05:32 Q. Do you have any idea of the dates and times?

09:05:33 A. I do not. It would have been after the indictment was filed and as part of the overall dialogue or exchange that I had with Attorney Fahey and Walsh regarding different aspects of the case. I would have spoken with Attorney Fahey and Attorney Walsh.

09:05:54 MS. BIANCO: Objection to what he would have done.

09:05:55 A. I did speak with them.

09:05:58 Q. Did you also have conversations to your recollection about Heidi Allen's status as a potential confidential informant with Attorney Walsh?

09:06:07 A. Yes.

09:06:07 Q. Now, do you -- was that on just one occasion or more than one occasion on your recollection?

09:06:14 A. Best recollection would have been more than one occasion. Best recollection.

09:06:18 Q. Now you mentioned that the investigation was continuing and documents were still coming in after the December fourteenth date, and you mentioned there was a

09:06:29 second visit by Attorney Fahey on sometime in March, do you
09:06:43 recollect those questions?

09:06:44 A. I do.

09:06:46 Q. Showing you what's been received as Defendant's KKK,
09:07:15 I'm going to ask you if you recognize that document.

09:07:26 MS. BIANCO: I think he means the People's
09:07:29 KKK.

09:07:30 MR. MOODY: Did I say defendant's?

09:07:31 THE COURT: Yeah, KKK.

09:07:33 MR. MOODY: People's KKK.

09:07:35 A. Yes, I recognize KKK.

09:07:38 Q. And what is that?

09:07:39 A. Well, it's three pieces of paper stapled together.
09:07:42 The face page is a file memorandum that I prepared, it was
09:07:48 a memo from me to Investigator Terry Whipple regarding the
09:07:52 cases involving Gary Thibodeau, and it set forth that
09:07:59 attorneys Walsh and Fahey would be in our office on March
09:08:04 twenty-first, 1995 at 9:30 a.m. for the purposes of picking
09:08:08 up discoverable property and that they are bringing an
09:08:11 investigator with them and that I requested that he assist
09:08:16 in making sure they received that information.

09:08:19 Q. He being who?

09:08:21 A. Investigator Whipple, sir.

09:08:23 Q. Now you said that was written on what date?

09:08:26 A. The date that appears in the memo is March

09:08:30 fourteenth, 1995.

09:08:32 **Q.** And they were showing up on what -- and the -- it
09:08:36 was an appointment they were showing up on a different
09:08:39 date?

09:08:39 **A.** On March twenty-first, 1995 at 9:30 a.m.

09:08:43 **Q.** Okay, and to your knowledge did that meeting take
09:08:47 place?

09:08:48 **A.** As it relates to --

09:08:51 **Q.** So on March twenty-first did judge -- Attorney Walsh
09:08:54 and Attorney Fahey show up?

09:08:56 **A.** My best recollection is that Attorney Fahey came to
09:08:59 the office on March twenty-fourth, 1994 or five, 1995, and
09:09:10 also with attorney -- Attorney Fahey and Attorney Walsh.

09:09:14 **Q.** Okay, when you say came to the office, came to the
09:09:17 District Attorney's Office?

09:09:18 **A.** Yes, and correct myself, March twenty-first, 1995
09:09:22 came to the District Attorney's Office.

09:09:23 **Q.** And was the entire file, the entire Sheriff's
09:09:27 Department file in the District Attorney's Office at that
09:09:30 point in time in March?

09:09:30 **A.** Yes, it was.

09:09:31 **Q.** And would that have included the three statements
09:09:37 that you looked at earlier that were contained in Exhibit
09:09:41 Q?

09:09:41 **A.** Yes, sir, they were.

09:09:43 **Q.** Or QQQ, excuse me. Did discovery continue after March of 1995?

09:10:10 **A.** Yes, sir.

09:10:11 **Q.** Mr. Dodd, I want to show you what's been marked as People's Exhibit JJJ and ask you if you recognize that?

09:11:13 **A.** I do recognize it, yes, sir.

09:11:15 **Q.** And what is that?

09:11:16 **A.** Well, it's a series of documents. There's the first document is going to be an Oswego County District Attorney's Office copy of letters that were sent and attached documents to attorneys Walsh and Fahey on May seventeen, 1995 as part of the People's ongoing CPL 240.60 discovery responsibility to provide any and all additional discovery and/or Brady material. The first page is my -- our file copy of the cover letter, or it is the cover letter, and then in addition to that document there's a series of additional documents that were made part of this correspondence, sent to Attorneys Fahey and Walsh consisting of what appears to be the Sheriff's Department investigation report and various other items.

09:12:12 **Q.** And those documents that were with it, other than the cover letter, do they contain anywhere on there the green mark that you had explained earlier?

09:12:23 **A.** Yes.

09:12:24 **Q.** Are they on each page?

09:12:31 **A.** Yes. I have reviewed all of the attached documents
09:12:44 that were submitted to attorneys Fahey and Walsh, each of
09:12:47 those documents consistent with the procedure I have
09:12:50 affixed with a green ink mark.

09:12:52 **Q.** And you may have mentioned this but the date on the
09:12:54 letter is what?

09:12:55 **A.** May seventeen, 1995, sir.

09:12:58 **Q.** And that date is in when in relation to when the
09:13:00 trial of Gary Thibodeau started?

09:13:04 **A.** It would have been either during the trial or
09:13:10 immediately before the commencement of the jury selection
09:13:13 portion of the trial.

09:13:14 MR. MOODY: Judge, at this point in time I
09:13:18 would move to admit Exhibit JJ.

09:13:22 MS. PEEBLES: Judge, it's 11-A that we've
09:13:24 already introduced, and again, it's -- we're going to
09:13:27 have duplicates of everything because now they want --

09:13:29 THE COURT: What's the distinction?

09:13:30 MR. MOODY: Again, it's the green mark that's
09:13:32 on them, Judge.

09:13:32 THE COURT: I'll allow it in for the green
09:13:34 mark issue.

(People's Exhibit JJJ was received in
09:13:47 evidence).

09:13:47 **Q.** Now with regard to I'll use 11-A since -- I'm going

09:13:50 to have you look at Defendant's 11-A. Does that appear to
09:13:55 be a duplicate of what was in Exhibit JJJ, and I'll give
09:13:58 you JJJ if you want to see it.

09:14:01 **A.** Just one minute, sir. Could I look at JJJ?

09:14:11 **Q.** Sure.

09:14:12 **A.** Thank you.

09:14:13 (Whereupon, there was a pause in the
09:14:40 proceeding.)

09:14:40 **A.** Triple or 11-A, which unfortunately I just taken the
09:14:46 face page off because it came off from the staple which I
09:14:49 will hand back to you, sir, yes, that contains everything
09:14:53 that's in JJJ.

09:15:06 **Q.** Showing you 11-A then, and you got my paperclip? On
09:15:13 the second page of that document, if you could look at
09:15:17 that, is there a date stamp on that document?

09:15:19 **A.** May sixteen, 1995, received, Oswego County District
09:15:23 Attorney's Office.

09:15:23 **Q.** And the date of the letter again was what?

09:15:25 **A.** May seventeenth, 1995.

09:15:30 **Q.** And that date stamp would indicate what then?

09:15:35 **A.** That these documents were received at the Oswego
09:15:42 County District Attorney's Office on May sixteen, 1995, and
09:15:45 the date stamp was affixed to evidence the date they were
09:15:48 received.

09:15:50 **Q.** Now I want to show you what's been marked and

09:15:58 received as Defendant's Exhibit 11 and ask you to look at
09:16:01 that.

09:16:08 **A.** Yes, sir.

09:16:08 **Q.** Do you recognize those documents?

09:16:11 **A.** Yes, sir.

09:16:11 **Q.** And does -- is the -- any of those documents a -- in
09:16:18 any manner similar to what's in 11-A?

09:16:23 MS. BIANCO: Objection to the phrase "in any
09:16:25 manner."

09:16:26 THE COURT: Say similar.

09:16:30 MR. MOODY: In similar, sorry.

09:16:32 THE WITNESS: Do I answer, Judge?

09:16:33 THE COURT: Yes.

09:16:34 **A.** Page two, page two of Exhibit 11-A which is
09:16:42 identified as a supplemental report from an Investigator
09:16:47 Kleist, is in page two of Exhibit 11-A, and that's the only
09:17:07 document that I see is common between 11-A to 11.

09:17:10 **Q.** Is there a difference between page two on 11 and the
09:17:14 page two on 11-A?

09:17:16 **A.** Yes.

09:17:16 **Q.** What are the differences?

09:17:18 **A.** Received Exhibit 11-A is a report from Investigator
09:17:24 Nick Kleist from the Oswego County Sheriff's Department.
09:17:27 That has the date stamp affixed to it of May sixteen, 1995,
09:17:31 Oswego County District Attorney's Office. The same

09:17:34 document on Exhibit 11 has the date stamped received Oswego County District Attorney's Office May sixteen, 1995, and in addition to that, there is additional writing. There's a date stamp dated May twenty-third, 1995, Oswego County Sheriff's Department, and also some writing that does not appear on page two of Exhibit 11-A.

09:18:03 **Q.** Went you say writing, you mean handwriting?

09:18:05 **A.** Yes, sir, I'm sorry.

09:18:05 **Q.** And the handwriting, do you recognize who that belongs to?

09:18:12 **A.** I believe that is Investigator Whipple.

09:18:14 **Q.** Okay, do you have an explanation about why there are two dates stamps on 11, Exhibit 11 I believe?

09:18:22 **A.** Yes.

09:18:22 **Q.** What is that explanation?

09:18:24 **A.** When documents were received at the Oswego County District Attorney's Office, the procedure in fact was that they had to be date stamped received. Thereafter, the original document was then given to Sheriff's Department Investigator Whipple so that it would be received and made part of the Oswego County Sheriff's Department investigation file. I also know from having directly observed it that what the sheriff investigator would do is to date stamp as received when it is that Investigator Whipple received the document from the District Attorney's

09:19:01 Office.

09:19:01 **Q.** Why would you have received it first before the District Attorney's Office if you know, or excuse me, before the sheriff's?

09:19:10 **A.** Well, the investigators obviously provided it to the District Attorney's Office on that date. It may -- they just provided it on the date and we received it, and then following the procedure, the original would go over to Investigator Whipple to be made part of the Sheriff's Department investigation.

09:19:30 **Q.** Now, after May seventeenth you said either that was either at the beginning of jury selection or -- or excuse me, before jury selection and during the trial. Were you still providing documents?

09:19:45 THE COURT: Just a second, sir. Did you say after May seventeenth?

09:19:48 MR. MOODY: Yes. That was a horribly worded question and I'll rephrase it.

09:19:51 **Q.** After May seventeenth did you continue to provide documents that came up from the Sheriff's Department or other documents to Attorney Fahey?

09:19:59 **A.** Absolutely, yes.

09:20:00 **Q.** Were you meeting with witnesses while the trial was going on?

09:20:03 **A.** Absolutely, yes.

09:20:04 **Q.** And do you take notes when you meet with witnesses?

09:20:07 **A.** Yeah.

09:20:07 MS. BIANCO: Objection to the leading nature of those questions, Judge.

09:20:10 THE COURT: I think it's foundational. I'll allow a little bit of it.

09:20:13 **Q.** And what would you have done with those notes after you had met with the witnesses?

09:20:20 **A.** The notes that I created?

09:20:22 **Q.** Yes.

09:20:22 **A.** From the interview of a witness that was going to be testifying at time of trial.

09:20:26 **Q.** Yes.

09:20:26 **A.** I would reproduce all of the notes and pursuant to CPL 240.45 turn it over to both attorneys Walsh and Fahey.

09:20:39 **Q.** Even if you had -- and that would continue if you had met with the witness while the trial was going on?

09:20:45 **A.** Ongoing.

09:20:46 **Q.** Would you have also provided any other document that you had received or that had been created by the Sheriff's Department during that time?

09:20:53 MS. BIANCO: I'm going to object to these any other documents, vague generalities in the questions. If he has something specific, he should ask about something specific.

09:21:01 THE COURT: Is there something specific you can ask about?

09:21:04 MR. MOODY: I'm getting to that but I'll get to it directly. I was trying to establish a little bit more.

09:21:10 **Q.** I want to show you what's been marked as People's double S, SS, and ask you if you recognize that.

09:21:58 (Whereupon, there was a pause in the proceeding.)

09:22:22 **A.** Yes, I do recognize People's SS.

09:22:25 **Q.** And what is it?

09:22:34 THE COURT: Before we go on, just scheduling matter, we were scheduled to come back April seventh through the rest of that week. I have to impanel a grand jury at nine o'clock that morning so it won't be until the afternoon on the seventh.

09:22:45 MR. MOODY: The afternoon on the seventh?

09:22:47 THE COURT: I tried to change the Grand Jury but I'm not allowed to so sorry. Go ahead. Ask the question.

09:22:52 **Q.** What is Exhibit SS?

09:22:54 **A.** Well, the first page of Exhibit SS is an Oswego County District Attorney's Office file copy of a letter dated June fifth, 1995 that was sent by myself to Attorney Fahey and Attorney Walsh regarding both Gary Thibodeau and

09:23:11 Richard Thibodeau and it identifies that the document --

09:23:14 MS. BIANCO: Objection. He's reading from a
09:23:16 document not in evidence. He's asked what is it, not
09:23:18 what the contents of it.

09:23:20 THE COURT: Sustained.

09:23:22 **Q.** You said it's a cover letter?

09:23:26 **A.** It's a cover letter, yes, sir.

09:23:27 **Q.** And are there attachments there?

09:23:29 **A.** Yes, there are.

09:23:30 **Q.** And do you recognize both the letter and the
09:23:32 attachments?

09:23:33 **A.** Yes, I do.

09:23:33 **Q.** And does the letter contain a signature on there?

09:23:37 **A.** My signature.

09:23:39 **Q.** Okay, and you -- obviously you recognize your own
09:23:43 signature?

09:23:43 **A.** Yes, sir.

09:23:44 **Q.** Now, the -- when I gave you those documents they
09:23:47 were rubber banded together. Would they have been rubber
09:23:49 banded together at the time in the District Attorney's
09:23:52 file?

09:23:53 **A.** Yes, sir.

09:23:53 **Q.** If I could have that back.

09:24:03 THE COURT: Mr. Moody, what's the date of that
09:24:05 letter?

09:24:05 MR. MOODY: Well, I didn't want to read from the document that wasn't in evidence. I thought there would be an objection.

09:24:12 THE WITNESS: June fifth, 1995.

09:24:15 MR. MOODY: Showing Exhibit SS to defense counsel, Judge, I would move to admit this.

09:24:18 MS. BIANCO: Judge, I'm going to need a few minutes to go over this.

09:24:22 THE COURT: I understand. Do you want to take a quick five-minute recess to review it?

09:24:26 MS. BIANCO: Yes, thank you.

09:24:27 THE COURT: Take a quick five minutes so the defense can review the exhibit.

09:24:32 (Whereupon, there was a recess.)

09:32:48 THE COURT: Bring Mr. Dodd back in.

(Whereupon, there was a pause in the proceeding).

09:33:14 THE COURT: Mr. Dodd, consider that you're still under oath, sir.

09:33:17 THE WITNESS: Yes, sir, thank you.

09:33:19 THE COURT: Thank you, sir.

09:33:19 MS. BIANCO: Your Honor, I'd like to voir dire on these documents, and I'd like the podium and the mike if I could because it will be a few minutes.

09:33:26 THE COURT: Sure, okay.

VOIR DIRE EXAMINATION

09:34:01 BY MS. BIANCO:

09:34:02 **Q.** Mr. Dodd, the cover sheet on People's Exhibit SS,
09:34:26 that's on a yellow draft piece of paper, is that correct?

09:34:29 **A.** Yes.

09:34:29 **Q.** There is no note stationary on this, it doesn't say
09:34:35 Oswego County District Attorney's Office, correct?

09:34:36 **A.** That's correct.

09:34:37 **Q.** So this is not an identical copy of any letter you
09:34:41 sent is it?

09:34:41 **A.** It is an identical copy, yes.

09:34:44 **Q.** Okay, so you sent a letter without Oswego County
09:34:47 District Attorney's Office signature, or excuse me, the
09:34:50 heading, the letterhead, you sent that without it?

09:34:52 **A.** The letterhead was on the original letters sent to
09:34:57 Attorney Fahey and Attorney Walsh. That particular draft
09:35:01 copy does not contain the letterhead but the text of the
09:35:04 letter is exact.

09:35:05 **Q.** Okay, yes or no, is this particular letter SS, this
09:35:10 letter without the letterhead, is this the letter, an exact
09:35:14 copy of the letter you sent to Attorney Fahey?

09:35:16 MR. MOODY: Objection. I think he just
09:35:17 explained that, Judge.

09:35:18 THE COURT: I'll sustain the objection.

09:35:20 **Q.** Now this would have been your work draft, correct?

09:35:25 **A.** It was the file copy, yes, ma'am.

09:35:27 **Q.** Okay, so this would have been the one you might have written on, correct?

09:35:31 **A.** Well, I signed my name on it, but it was not written on. It was the file copy to evidence the date, to whom and what was sent to attorneys Fahey and Walsh.

09:35:42 **Q.** Yes or no, there's not T-O-T on this document is there?

09:35:45 **A.** That would be true.

09:35:46 **Q.** Okay, and yes or no, in this particular document, you don't list every item you turned over to the defense, correct?

09:35:55 **A.** Ms. Bianco, I would have to look at it, ma'am.

09:35:58 **Q.** Certainly.

09:35:59 **A.** And I'd have to look at what was affixed to it to see if everything was included.

09:36:04 **Q.** Absolutely.

09:36:12 **A.** Thank you.

09:36:16 (Whereupon, there was a pause in the proceeding.)

09:36:39 **A.** No. The cover letter top page of SS includes a portion by description of what's attached and was sent over but does not list everything that was sent over, no, it does not.

09:36:53 **Q.** And specifically, it does not mention anything about

09:36:58 Heidi Allen's confidential informant documents in this
09:37:02 particular letter does it?

09:37:03 A. That's true.

09:37:03 MR. MOODY: Judge, we're getting kind of far
09:37:07 afield from voir dire. This is getting closer to
09:37:09 cross-examination.

09:37:10 MS. BIANCO: They want to introduce this as
09:37:11 being turned over. I'm allowed to talk about what it
09:37:14 is and whether it should be introduced.

09:37:16 THE COURT: Just because the letter doesn't
09:37:18 specifically list every item, what does it have to do
09:37:21 with whether it was sent over or not?

09:37:22 MS. BIANCO: Well, that's the question of
09:37:24 whether it's -- whether it's admissible, whether these
09:37:26 things are attached. Let me ask further questions,
09:37:27 Judge.

09:37:27 THE COURT: Why don't you ask if they were
09:37:29 attached. If they weren't listed but still attached
09:37:32 seems to be the relevant question.

09:37:33 Q. On none of these documents that were attached is
09:37:36 there any green marks is there?

09:37:38 A. Again, I'd have to look at it.

09:37:39 Q. Certainly.

09:37:40 A. Thank you.

09:38:32 (Whereupon, there was a pause in the

09:38:36 proceeding.)

09:38:36 **A.** No, on the documents that you have just provided me --

09:38:39 **Q.** Thank you.

09:38:40 **A.** -- to review, there are no green marks that appear on those documents.

09:38:42 **Q.** And the green mark was your system to make sure --

09:38:45 THE COURT: That's not voir dire regarding the admissibility, this is cross-examination. What is your opposition to the admissibility of these documents? The green mark is not an admissibility issue, that's a cross-examination issue.

09:38:59 **Q.** Did -- did you testify that on all documents you received you stamped District Attorney's Office?

09:39:04 THE COURT: Cross-examination question. Why are these not admissible? He identified them.

09:39:10 MS. BIANCO: Judge, he testified on direct examination as to a certain system.

09:39:14 THE COURT: That's a cross-examination question, Ms. Bianco.

09:39:18 MS. BIANCO: Well, then, Judge, I'll go to each document bit by bit to talk about their relevancy.

09:39:22 THE COURT: That's -- get to the voir dire quickly. You can argue it's not relevant, but that's not a voir dire question to the witness.

09:39:30 MS. BIANCO: Well, okay, I will argue that they're -- certain documents are not relevant to these issues. The certificate of conviction for Donald Neville, not relevant.

09:39:42 MR. MOODY: Objection, Judge. There are documents in there that are relevant. This was part of a package. I'm -- the relevant documents that are in there we'll get to in a minute and once it's admitted. I'm not claiming that every document in here is relevant to this hearing. What I am claiming is that there are documents in there that are relevant.

09:40:01 THE COURT: Can you identify those?

09:40:03 MR. MOODY: I will identify those once it's admitted and we'll also --

09:40:07 THE COURT: Your opposition seems to be more cross-examination questions at this point.

09:40:13 MS. BIANCO: Well, I don't know necessarily, Judge, they're trying to introduce these documents that they were turned over. I think I should be allowed to talk about that they don't comply with their system.

09:40:20 THE COURT: That's cross-examination question. I'm going to allow them in. You can cross-examine your questions regarding whether he followed the standard procedure or not.

09:40:28 MS. BIANCO: Well, Judge, could I ask one

09:40:30 further followup question --

09:40:30 THE COURT: Sure.

09:40:31 MS. BIANCO: -- on the CI document
09:40:35 information.

09:40:35 THE COURT: If it's a voir dire question, not
09:40:37 a cross-examination question.

09:40:38 MS. BIANCO: Certainly.

09:40:39 **Q.** This particular document, and I want to show it to
09:40:44 you in the packet, the only date stamp is Oswego County
09:40:48 Sheriff, May twenty-third, 1995?

09:40:53 **A.** What's handed me --

09:40:53 THE COURT: Was there any specific order of
09:40:55 those documents?

09:40:56 MS. BIANCO: No, Judge.

09:40:57 **A.** There's -- what has been handed to me has three
09:41:01 pieces of paper stapled together, and on each of the
09:41:05 documents there's a received date stamp of May twenty-
09:41:08 third, 1995, Oswego County Sheriff's Department.

09:41:12 **Q.** Didn't you testify that you stamped that document
09:41:15 before you sent it to the DA's? You said that on direct
09:41:18 examination. I think it was QQQ.

09:41:19 MR. MOODY: Objection.

09:41:20 THE COURT: That's another cross-examination
09:41:21 question. I'm going to allow the documents to come in
09:41:25 as SS. You can cross-examine the witness when he's

09:41:27 your witness.

09:41:28 MS. BIANCO: Judge, I'd ask that they come in
09:41:29 for the limited purpose that they weren't necessarily
09:41:32 given to the defense because I have -- I mean we don't
09:41:34 have any procedure followed -- are you admitting them
09:41:36 in their entirety like they were given to the defense?

09:41:40 THE COURT: It comes down to being a weight
09:41:41 issue again, Ms. Bianco. You can challenge what the
09:41:44 witness did or did not do. These are not voir dire
09:41:47 questions.

09:41:48 MS. BIANCO: Well, Judge, I would also object
09:41:50 under the best evidence rule. This is not a document
09:41:52 that was sent directly to the defense. This is not
09:41:55 something that has a heading on it, this is something
09:41:57 that's a yellow piece of paper.

09:41:59 THE COURT: Overruled. I'm allowing it in.

(People's Exhibit SS was received in evidence).

09:43:02 BY MR. MOODY:

09:43:03 **Q.** Now, Mr. Dodd, showing you again Exhibit SS, you
09:44:22 were asked some questions and -- about the fact that
09:44:25 there's no letterhead on that copy. Do you have an
09:44:28 explanation about why there's no letterhead?

09:44:30 **A.** Yes.

09:44:31 **Q.** What's that?

09:44:31 **A.** This was the file copy. The original letters were
09:44:38 printed on mast headed or letterheaded Oswego County
09:44:42 District Attorney's Office letterhead. The documents were
09:44:46 affixed to the letter and mailed to both attorneys Walsh
09:44:50 and Fahey. This was the work copy. What I was trying to
09:44:57 do was in essence we saved an expense. Instead of using
09:45:00 Oswego County letterheaded documents, we just used this as
09:45:04 the work copy, and I affixed that and made that part of the
09:45:07 District Attorney's Office file.

09:45:09 **Q.** And showing you Exhibit 11-A, Exhibit 11-A is on
09:45:23 letterhead, correct?

09:45:24 **A.** Page one is, yes, sir.

09:45:26 **Q.** Now, also on 11-A it references another letter does
09:45:31 it not or a previous letter more precisely?

09:45:34 **A.** 11-A references on page one another letter dated
09:45:40 April twenty-fifth, 1995. 11-A is dated May seventeenth,
09:45:44 1995. It references a prior letter of April twenty-fifth,
09:45:49 1995, yes, sir.

09:45:55 (People's Exhibit RRR was marked for
09:45:56 identification).

09:46:31 **Q.** Showing you what's been marked as Exhibit RRR.

09:46:39 **A.** Yes.

09:46:39 **Q.** Do you recognize that document?

09:46:40 **A.** I do.

09:46:41 **Q.** And what is that?

09:46:42 **A.** It's a letter that I drafted dated April
09:46:45 twenty-five, 1995 to attorneys Walsh and Fahey regarding
09:46:50 both Richard Thibodeau and Gary Thibodeau.

09:46:53 **Q.** Is that the letter on the letterhead?

09:46:55 **A.** No, it is not.

09:46:56 **Q.** Okay, and but you recognize that as what then?

09:46:58 **A.** This is the Oswego County District Attorney's Office
09:47:02 file copy of the original letters that were sent to
09:47:06 Attorneys Walsh and Fahey on the exact same date of April
09:47:09 twenty-five, 1995.

09:47:11 MR. MOODY: Judge, I'm going to move to admit
09:47:14 Exhibit RRR only for limited purposes to show that
09:47:17 there were other letters that were in the file that did
09:47:19 not go on letterhead.

09:47:23 MS. BIANCO: Judge, this one isn't even signed
09:47:25 so we object.

09:47:28 THE COURT: Can you explain why it wasn't
09:47:30 signed, Mr. Moody?

09:47:31 MR. MOODY: Can you explain why it wasn't
09:47:33 signed?

09:47:34 THE WITNESS: Can I look at the document
09:47:35 please?

09:47:36 MR. MOODY: Sure.

09:47:42 THE WITNESS: The originals would have been
09:47:43 signed. I didn't sign this one. This is the exact

09:47:48 reproduction photocopy.

09:47:49 THE COURT: I'll allow it in for the limited 09:47:51 purpose of the letterhead issue.

(People's Exhibit RRR was received in 09:47:53 evidence).

09:47:53 MS. BIANCO: We would object, Judge.

09:47:54 THE COURT: Also, Ms. Bianco, I don't think I 09:47:56 placed on the record you object -- your objection to SS 09:47:59 coming in. I know we had a discussion but that was 09:48:03 over your objection.

09:48:04 MS. BIANCO: Yes. If I could just explain on 09:48:06 the record why I'm objecting to RRR.

09:48:08 THE COURT: That's fine.

09:48:09 MS. BIANCO: They're contending that this is 09:48:10 another draft letter that was sent to the defense and 09:48:14 that they sent out draft letters. The first draft 09:48:17 letter under SS was signed. This draft letter isn't 09:48:21 signed. I would contend that this is not the best 09:48:24 evidence of the letter that was sent and that this 09:48:27 isn't relevant and isn't dispositive of any issue.

09:48:31 THE COURT: I don't see any relevance. I 09:48:32 don't see any requirement that a file copy letter be 09:48:34 signed. Note your objection though.

09:48:38 **Q.** Now turning to Exhibit SS, I'm going to show you 09:48:44 this document and then I'm going to also show you what's

09:48:47 been received as Exhibit LLL. Can you identify LLL for me
09:49:01 first please?

09:49:01 **A.** LLL is a clear plastic bag inside a clear plastic
09:49:07 bag. There are three pieces of paper stapled together,
09:49:11 sir.

09:49:12 **Q.** Okay, if you -- do you recognize those three pieces
09:49:15 of paper?

09:49:15 **A.** I do.

09:49:16 **Q.** Okay, if you could, could you look and see if
09:49:19 anywhere in triple, or excuse me, SS, if those three
09:49:23 documents are included in the materials that were sent
09:49:26 along with that letter.

09:49:27 **A.** Yes, sir.

09:49:30 (Whereupon, there was a pause in the
09:49:32 proceeding.)

09:49:32 MS. BIANCO: Can I see LLL? Can I see the
09:49:35 exhibit?

09:49:36 MR. MOODY: Sure.

09:50:16 (Whereupon, there was a pause in the
09:51:22 proceeding.)

09:51:22 **A.** Yes. I've looked at the three documents I removed
09:51:25 from LLL, and then visually inspected Exhibit SS, the
09:51:32 documents, and I see that all of the documents that are in
09:51:37 Exhibit LLL are contained within the letter of June five,
09:51:43 1995 designated as Exhibit SS and is a green sticky at that

09:51:49 location.

09:51:50 **Q.** And looking -- the green sticky is on which exhibit?

09:51:54 **A.** The green sticky is in Exhibit SS, sir.

09:51:57 **Q.** And with regard to Exhibit LLL, does that contain 09:52:02 the green mark in pursuant to your procedure?

09:52:05 **A.** It does on -- yes, sir, it does.

09:52:08 **Q.** Okay, on which page?

09:52:09 **A.** Page one.

09:52:11 **Q.** And why's it only on one page of the three?

09:52:13 **A.** Procedure that we used was that if there were 09:52:16 documents stapled together, you would mark with a green ink 09:52:20 on page one of the documents that were stapled together.

09:52:22 **Q.** And are the documents in LLL stapled together?

09:52:28 **A.** Yes.

09:52:30 **Q.** And are the documents that are identical to it in SS 09:52:34 stapled together?

09:52:36 **A.** Yes.

09:52:41 **Q.** Do you have an explanation then about why there 09:52:44 would be no green mark on the copy with -- on SS?

09:52:50 **A.** The Exhibit LLL with the green marks reflect that 09:53:00 whomever made the copies, whatever person was tasked to 09:53:04 making the copies following the procedure that I had in 09:53:07 place, was to mark on the original with green ink on the 09:53:13 original.

09:53:14 **Q.** And LLL is the original then?

09:53:16 **A.** It appears to be.

09:53:17 **Q.** Okay.

09:53:17 **A.** And but to reflect that there was an exact
09:53:22 reproduction of those documents that was made.

09:54:06 MS. PEEBLES: Can we see LLL again please?

09:54:10 MR. MOODY: Sure.

09:54:42 (Whereupon, there was a pause in the
09:54:43 proceeding.)

09:54:43 **Q.** During the trial of Gary Thibodeau, do you know one
09:54:57 way or the other whether Attorney Walsh was present?

09:55:00 **A.** I do.

09:55:01 **Q.** And was he present?

09:55:04 **A.** Every day is my best recollection.

09:55:08 **Q.** And did he -- do you remember where he would have
09:55:11 sat?

09:55:13 **A.** Yes. He sat at counsel's table with Attorney Fahey.

09:55:17 **Q.** And did you observe one way or the other whether or
09:55:22 not Attorney Walsh appeared to have brought his file with
09:55:24 him?

09:55:25 **A.** I did observe and it appeared that he had brought
09:55:28 portions of at least paper.

09:55:30 **Q.** Okay, did you observe one way or the other whether
09:55:33 or not you observed any assistance being given by judge --
09:55:37 by Attorney Walsh to Attorney Fahey during the trial?

09:55:39 MS. BIANCO: Objection to the term

09:55:40 "assistance," what he's looking at, and also leading.

09:55:45 THE COURT: Leading is foundational. Can you
09:55:48 be more specific about what do you mean by --

09:55:50 MR. MOODY: I was going to get to that.

09:55:51 THE COURT: Maybe want to ask him what he
09:55:52 means by --

09:55:53 MR. MOODY: Be more specific.

09:55:54 THE COURT: Right.

09:55:54 **Q.** Can you describe what you observed going on between
09:55:58 Judge Walsh and Judge Fahey during the trial?

09:56:01 **A.** During the course of voir dire and also during the
09:56:03 course of the trial, both attorneys Fahey and Walsh were
09:56:06 seated together at counsel's table, and during the course
09:56:09 of the trial I directly observed spoken word conversations
09:56:14 routinely between the two. I directly personally observed
09:56:17 at times Attorney Walsh to be pointing out certain --
09:56:24 pointing to documents and pointing to portions of documents
09:56:27 that Mr. Fahey was looking at.

09:56:31 **Q.** Now, during the course of this investigation, you
09:56:34 indicated that you reviewed all of the documents that were
09:56:38 prepared as part of the Oswego County Sheriff's Department
09:56:42 files. As part of that, do you recognize the name Roger
09:56:45 Breckenridge?

09:56:46 **A.** Yes.

09:56:46 **Q.** How do you recognize the name Roger Breckenridge?

09:56:49 **A.** After having refreshed my recollection, Roger Breckenridge was an individual that was part of the overall investigation by the Sheriff's Department. My recollection that he was interviewed I believe.

09:57:02 **Q.** Okay, do you have a recollection one way or the other whether or not he appeared on either witness list for yourself or Gary Thibodeau's attorney, Mr. Fahey?

09:57:12 **A.** He was not on the People's direct evidence witness list, but yes, in fact, Roger Breckenridge appeared on Attorney Fahey's list of potential defense witnesses, he did.

09:57:21 **Q.** Do you remember whether anyone else related to Roger Breckenridge also appeared on Attorney Fahey's witness list?

09:57:28 **A.** Tracey Breckenridge.

09:57:30 **Q.** And what was your understanding of the relationship between Tracey Breckenridge and Roger Breckenridge?

09:57:35 MS. BIANCO: Objection of his understanding of their relationship. It's not relevant.

09:57:39 THE COURT: I'll sustain.

09:57:40 **Q.** Did you -- and did you recognize the name Michael Bohrer from the investigation?

09:57:46 **A.** After refreshing my recollection, yes.

09:57:49 **Q.** And what was -- what was your recollection of Michael Bohrer?

09:57:53 **A.** Michael Bohrer was an individual who -- who was part
09:57:59 of the overall investigation involving the abduction of
09:58:02 Heidi Allen, that Mr. Bohrer was interviewed by members of
09:58:06 the Federal Bureau of Investigation, and in addition, my
09:58:10 best recollection is that Mr. Bohrer was interviewed by
09:58:13 members of the Oswego County Sheriff's Department.

09:58:15 **Q.** You mentioned the Federal Bureau of Investigation.
09:58:18 Were they assisting the Oswego County Sheriff's Department
09:58:20 in this investigation?

09:58:21 **A.** Yes.

09:58:21 **Q.** Do you remember to what extent?

09:58:25 **A.** I know that they -- well, yes. First, in terms of
09:58:30 the laboratory, the Federal Bureau of Investigation
09:58:33 received items of physical evidence that were submitted for
09:58:37 examination to the FBI laboratory. In addition to that,
09:58:41 the Federal Bureau of Investigation assisted by way of
09:58:46 either providing information to the Sheriff's Department
09:58:49 that they generated as part of the investigation which
09:58:52 would include statements or reports relative to individuals
09:58:56 they may have interviewed or interest. Best recollection.

09:58:59 **Q.** Now, additionally, did you -- do you recognize the
09:59:03 name James Steen?

09:59:05 **A.** Yes.

09:59:05 **Q.** How do you recognize the name James Steen?

09:59:07 **A.** Most recently I prosecuted Mr. Steen for murder in

09:59:10 the first degree and murder in the second degree.

09:59:12 **Q.** And when would approximately that have been?

09:59:14 **A.** 2010, eleven I believe, best recollection.

09:59:20 **Q.** And with regard to the investigation of Heidi Allen,
09:59:23 you did -- do you -- excuse me. Do you recall ever hearing
09:59:27 the name James Steen in as part of that investigation?

09:59:31 **A.** I have to respond in that there were approximately
09:59:34 fifteen-hundred leads. No, I do not have a recollection of
09:59:38 James Steen as being part of the investigation by the
09:59:42 Sheriff's Department.

09:59:43 **Q.** Now as part of the -- as part of the trial and part
09:59:56 of the investigation that you were -- you were responsible
09:59:58 for with the -- as part of the case that you were
10:00:00 responsible for, did you become familiar with the condition
10:00:04 of the store on April third of 1994 after Heidi Allen
10:00:10 disappeared?

10:00:11 **A.** The D & W Convenience Store in New Haven, New York?

10:00:14 **Q.** Yeah.

10:00:15 **A.** Yes, sir.

10:00:15 **Q.** I want to --

10:00:23 MR. MOODY: Can I have that marked?

10:00:24 (People's Exhibit SSS was marked for
10:00:26 identification).

10:00:56 **Q.** I want to show you what's been marked as People's
10:00:59 Exhibit SSS and ask you if you recognize that.

10:01:02 A. Yes, I do recognize it, sir.

10:01:05 Q. And what is that?

10:01:05 A. This is a photograph depicting an interior view of a
10:01:09 portion of the D & W Convenience Store as it would have
10:01:12 appeared April third, 1994. The specific view that's
10:01:17 depicted would be a portion of the employee portion of the
10:01:24 D & W Convenience Store behind the counter.

10:01:27 Q. And was this photograph admitted at trial?

10:01:32 A. In Gary Thibodeau's trial, yes, as then Exhibit 9.

10:01:41 Q. And based upon your understanding of the case
10:01:45 evidence, was there any sign of a struggle that had gone on
10:01:48 inside the store, of the D & W, on Easter of 1994?

10:01:52 A. There was no evidence of a struggle whatsoever.

10:01:55 MR. MOODY: Judge, showing Exhibit SSS to
10:01:59 defense counsel, I would move to admit.

10:02:11 MS. BIANCO: No objection.

10:02:12 THE COURT: No objection. SSS is in without
10:02:17 objection.

10:02:41 (People's Exhibit SSS was received in
10:02:46 evidence).

10:02:59 Q. One last question. You also prosecuted Richard
10:03:03 Thibodeau, is that accurate?

10:03:04 A. Through jury trial, yes, sir.

10:03:05 Q. During Richard Thibodeau's trial, do you have a
10:03:09 recollection one way or the other whether or not Heidi

10:03:12 Allen's status as a confidential informant came up?

10:03:17 **A.** During cross-examination or direct examination?

10:03:21 **Q.** During any of the trial if you have a recollection.

10:03:23 **A.** I don't presently have a clear recollection.

10:03:34 **Q.** Is there anything I can show you that might refresh
10:03:37 your recollection?

10:03:37 **A.** Any documents associated with it, my notes, yes.

10:03:40 **Q.** Specifically your notes from that trial, would that
10:03:43 refresh --

10:03:44 **A.** Yes, absolutely.

10:04:10 (People's Exhibit TTT was marked for
10:04:12 identification).

10:04:22 **Q.** Showing you what's been marked as People's Exhibit
10:04:27 TTT, ask you if you could -- first off, do you recognize
10:04:29 that?

10:04:29 **A.** I do.

10:04:30 **Q.** And if you could review that to yourself and see if
10:04:33 that refreshes your recollection as to whether or not Heidi
10:04:40 Allen's status as a confidential informant ever came up
10:04:43 during Richard Thibodeau's trial.

10:04:45 **A.** It does refresh my recollection. I can testify from
10:04:47 my own direct recollection.

10:04:49 **Q.** And did -- did the status of Heidi Allen as a
10:04:53 confidential informant come up during Richard Thibodeau's
10:04:56 trial?

10:04:56 **A.** It did. Attorney Walsh cross-examined Chris
10:05:00 VanPatten on the -- in part upon the issue of whether or
10:05:03 not Heidi Allen was a confidential informant or had
10:05:06 provided confidential information.

10:05:09 **Q.** And now previously there was -- I asked you about
10:05:15 Tracey Breckenridge. At any point in time did you ever
10:05:19 meet with or take a statement from Tracey Breckenridge?

10:05:22 **A.** Did not meet with, did not take a statement from
10:05:25 Tracey Breckenridge.

10:05:26 **Q.** At any point in time during the investigation?

10:05:29 **A.** No. I don't have any -- I -- I did not participate
10:05:34 in the investigation in a sense of interviewing potential
10:05:37 witnesses in the first instance, no.

10:05:42 **Q.** Showing you Exhibit QQQ which you had indicated was
10:06:33 your work copy of some statements from VanPatten, Anderson
10:06:36 and Montgomery, those statements reflect among other things
10:06:43 the card that Chris VanPatten took when he spoke with Heidi
10:06:50 Allen being dropped at some point in time in the D & W, is
10:06:55 that accurate?

10:06:56 **A.** It does.

10:06:56 **Q.** And were you aware at any point in time of any
10:07:00 threats or any information that would -- that -- regarding
10:07:05 Heidi Allen's -- any threats against Heidi Allen or any
10:07:09 information pertaining to Heidi Allen being in danger
10:07:12 because of her status as a confidential informant during

10:07:14 the investigation or during the -- up until the end of the
10:07:18 trials?

10:07:19 **A.** I was not aware of anything at all that Heidi Allen
10:07:26 was in danger prior to her abduction associated with Heidi
10:07:31 Allen having either providing information to the Sheriff's
10:07:34 Department and she wasn't working as a confidential
10:07:36 informant.

10:07:37 **Q.** Well, let's talk a little bit about the word
10:07:39 confidential informant. What do you mean when you say
10:07:41 that?

10:07:42 **A.** Well, confidential informant can mean many things.
10:07:46 In the first instance, confidential informant is an
10:07:49 individual who provides information to either police person
10:07:53 or a member of the District Attorney's Office, and it's
10:07:55 confidential versus an individual who is working as a
10:07:59 confidential informant. There's a bright line distinction.

10:08:02 **Q.** What do you say -- what do you mean when you say
10:08:04 working confidential informant?

10:08:06 **A.** A person who is working as confidential individual
10:08:09 or informant would be an individual who has an ongoing
10:08:11 relationship with either a police officer or agency or the
10:08:14 District Attorney's Office whereas part of their assistance
10:08:19 in some form of investigation they are obtaining
10:08:23 information and providing that information to the police
10:08:27 person or the DA or working as an agent of law enforcement.

10:08:32 MS. BIANCO: I'm going to object to the
10:08:33 relevance of general nature of this testimony. If he
10:08:35 wants to talk about Heidi Allen, that's one thing, but
10:08:37 the general nature of confidential informants, not
10:08:40 relevant.

10:08:41 THE COURT: I think it's very relevant. I'll
10:08:42 allow it.

10:08:43 **Q.** When you say working or providing information, are
10:08:46 you referring to some type of active investigation?

10:08:48 **A.** Active, ongoing information being provided by the
10:08:53 individual who is working as a confidential informant.
10:08:57 Yes, sir.

10:09:00 MR. MOODY: I have no further questions.

10:09:01 THE COURT: Ms. Bianco, do you want to take a
10:09:03 few minutes before or --

10:09:04 MS. BIANCO: A few minutes before, Judge, so I
10:09:06 can get some documents.

10:09:08 THE COURT: We have been at it for an hour and
10:09:11 a half.

10:09:11 MS. BIANCO: That's fine.

10:09:12 THE COURT: We'll take a recess for ten
10:09:13 minutes before cross-examination starts.

10:09:14 (Whereupon, there was a recess.)

10:23:01 THE COURT: Bring Mr. Dodd back in please.

(Whereupon, there was a pause in the

10:23:12 proceeding).

10:23:12 THE COURT: Mr. Dodd, consider the fact you're still under oath, sir.

10:23:15 THE WITNESS: Yes, sir.

10:23:15 THE COURT: Thank you, sir. Ms. Bianco, whenever you're ready.

10:23:23 MS. BIANCO: Thank you, Your Honor.

CROSS-EXAMINATION

10:23:25 BY MS. BIANCO:

10:23:26 **Q.** Now Mr. Dodd, you were with the Oswego County District Attorney's Office for more than twenty years, is that correct?

10:23:32 **A.** Twenty-six.

10:23:33 **Q.** Twenty-six years? And during the course of the Thibodeau case, you stated you wanted to create a system that was organized and verifiable, yes?

10:23:45 **A.** Yes.

10:23:46 **Q.** Okay, and you also testified on direct examination that this had the largest volume of material you had been on any case during your course in the District Attorney's Office, is that right?

10:23:58 **A.** Yes.

10:23:59 **Q.** And the file contained thousands of pages of material, correct?

10:24:04 **A.** Yes.

10:24:05 **Q.** And you tried to be very detailed and organized in handling of the material, correct?
10:24:09

10:24:11 **A.** I was detailed and organized.

10:24:14 **Q.** And you stated on direct examination that you reviewed every single piece of paper in this case.
10:24:17

10:24:20 **A.** Yes.

10:24:21 **Q.** Were you involved in the daily meetings with the investigators concerning the leads that were coming in?
10:24:31

10:24:34 **A.** No.

10:24:35 **Q.** Were they calling you on a daily basis concerning the leads that were coming in?
10:24:39

10:24:42 **A.** During the entirety of the investigation, no.

10:24:45 **Q.** Did you receive calls from Investigator Whipple updating you on the latest leads?
10:24:48

10:24:52 **A.** I'm sure there were some calls, but principally, Ms. Bianco, it was in person.
10:24:55

10:24:57 **Q.** It was what?

10:24:57 **A.** It was in person with Investigator Whipple.

10:25:00 **Q.** So Investigator Whipple would come up in person and tell you what the leads were, the newest evidence?
10:25:03

10:25:06 **A.** The investigation in part in terms of where the documents were moved to the Oswego County District Attorney's Office so we were within the same office if you will and Investigator Whipple would talk with me about the investigation, yes.
10:25:11
10:25:15
10:25:18
10:25:23

10:25:24 **Q.** But that wasn't done until after August of 1994, is that correct? It wasn't moved, the file was not moved to the District Attorney's Office till after August of 1994.

10:25:34 **A.** I don't have a clear recollection as to when the actual file moved, but it did move from the Sheriff's Department to the District Attorney's Office, yes.

10:25:42 **Q.** Prior to it moving from the Sheriff's Department to the District Attorney's Office, did Investigator Whipple come up on a regular basis to inform you as to the leads that were coming in?

10:25:51 **A.** Either he would come up or I would go down, yes.

10:25:56 **Q.** Okay.

10:25:59 **A.** Within the same building.

10:26:01 **Q.** And you were aware, Mr. Dodd, having read every sheet of paper, that Heidi Allen's confidential informant file was brought to the New Haven command center on the day of her abduction, is that right?

10:26:19 **A.** I don't have a clear recollection of it being moved on that date, I don't.

10:26:24 **Q.** Showing --

10:26:25 MS. BIANCO: May I approach the witness?

10:26:26 THE COURT: Sure.

10:26:27 **Q.** Showing you what's been marked Defendant's Exhibit 5, I'd ask you to take a look at page ten of Investigator Lortie's report and read that to yourself please. Last

10:26:38 page.

10:26:38 A. Thank you.

10:26:40 (Whereupon, there was a pause in the
10:27:49 proceeding.)

10:27:49 A. I have reviewed the last page, yes.

10:27:51 Q. So would it be fair to say that the Heidi Allen
10:27:55 informant information was brought on the day of her
10:27:59 abduction to the command center?

10:28:01 A. It was referenced in this report, yes.

10:28:03 Q. And you would have read that report, correct?

10:28:05 A. At -- yes.

10:28:07 Q. So that would have been April fourth, 1994, excuse
10:28:13 me, April fourth, 1994.

10:28:16 A. The document would speak for itself, miss. I don't
10:28:20 have a clear recollection of the date.

10:28:21 Q. Well, were you aware --

10:28:23 MR. MOODY: I'm going to object. Which date
10:28:25 we talking about?

10:28:26 MS. BIANCO: The date of the abduction.

10:28:27 THE WITNESS: April third, 1994.

10:28:28 Q. April third, 1994 you were made aware of that
10:28:32 document soon after her disappearance, correct?

10:28:35 A. Which document, Ms. Bianco?

10:28:38 Q. Exhibit 5, the Lortie report, were you made aware of
10:28:43 that?

10:28:43 **A.** At some point as part of the investigation, yes, I
10:28:47 reviewed all of the Sheriff's Department investigation
10:28:50 reports at some point. That does not mean that it was on
10:28:54 the same day that it was generated.

10:28:56 **Q.** But can you tell me when you found out that Heidi
10:28:58 Allen was an informant or was working as an informant at
10:29:02 some past time?

10:29:04 **A.** December eighth, 1994.

10:29:06 **Q.** So prior to December eighth, you had no knowledge
10:29:09 whatsoever that she had been involved as a confidential
10:29:12 informant in some way, shape or form with the Sheriff's
10:29:16 Department. Is that your testimony?

10:29:17 **A.** December eighth, 1994 was when I requested the
10:29:21 Sheriff's Department that they provide all information
10:29:24 associated with Ms. Allen having either provided
10:29:27 information or working as a confidential informant.

10:29:29 **Q.** My question is were you aware before December eighth
10:29:33 that Heidi Allen in some way, shape or form was involved as
10:29:38 a confidential informant with the Sheriff's Department?

10:29:41 **A.** I would have been aware of the fact that she had
10:29:42 provided some information at sometime prior to December
10:29:45 eighth, 1994, yes.

10:29:47 **Q.** When did you become aware of that?

10:29:49 **A.** I don't have a clear recollection of when that was,
10:29:52 miss.

10:29:52 **Q.** And you said you were being kept up to date by Investigator Whipple as to what was going on with leads, correct?

10:30:02 **A.** Yes.

10:30:02 **Q.** Did Investigator Whipple come to you and tell you that there was some talk about that Heidi Allen was an informant and it meant nothing? Did he tell you that?

10:30:14 **A.** I have no recollection whatsoever of Investigator Terrence Whipple telling me personally that it -- something meant nothing about Heidi Allen being a potential confidential informant. I have no recollection of that at all.

10:30:32 **Q.** Did he tell you about the meeting where he was at that it was discussed about her informant status with the other members of the Sheriff's Department? Did he tell you about that?

10:30:41 **A.** I don't have a recollection of that, no, but I have -- what time frame are you referencing, miss, what time frame?

10:30:49 **Q.** I'm referencing between the time of her abduction and the time that the file was brought to your office, between those time frames.

10:31:02 **A.** There would have been information that I would have reviewed or information brought to my attention on the overall investigation, and a subsection of that may have

10:31:16 dealt with Heidi Allen having provided information to the
10:31:18 Sheriff's Department. I just don't have a clear
10:31:20 recollection of the when.

10:31:21 **Q.** Well, do you have a clear recollection whether you
10:31:24 spoke with Investigator Whipple about his conversation with
10:31:28 other members of the Sheriff's Department that this
10:31:30 information was not important? Do you have a clear
10:31:33 recollection about that?

10:31:34 **A.** As I testified a moment ago --

10:31:36 MR. MOODY: Objection. Asked and answered.

10:31:38 THE COURT: Sustained.

10:31:39 **Q.** Now you -- you weren't the individual who decided on
10:31:43 how the lead sheets were going to be kept, correct, that
10:31:47 was Investigator Whipple?

10:31:48 **A.** That's true. Investigator Whipple was responsible
10:31:51 for the lead number designations and identification of
10:31:56 areas to be followed up on, yes.

10:31:58 **Q.** Okay, and a lead was some form of information which
10:32:02 could advance the investigation and assist resolving the
10:32:06 case surrounding Heidi Allen's abduction, is that true?

10:32:09 **A.** Potentially, yes.

10:32:10 **Q.** A lead would be created in connection with the
10:32:12 information coming in as it came in, is that right?

10:32:16 **A.** It potentially could be, yes.

10:32:18 **Q.** Okay, and the leads were assigned numbers?

10:32:22 A. Yes.

10:32:23 Q. And all of the significant leads had a number on it, 10:32:27 is that right?

10:32:29 A. There was a --

10:32:31 MR. MOODY: I'm going to object. He's not 10:32:32 responsible for determining the leads and that process.

10:32:36 THE COURT: He's already testified he didn't 10:32:38 establish the leads, the numbers or anything to that 10:32:40 effect.

10:32:40 Q. Well, when you took possession of the file --

10:32:42 THE COURT: I'll sustain the objection.

10:32:43 Q. In -- when you got the file from the Sheriff's 10:32:48 Department, that was the original file, correct?

10:32:50 A. It was moved. When you say got it, it was merely 10:32:53 moved, miss, from the Sheriff's Department to the District 10:32:57 Attorney's Office. It was always the Sheriff's Department 10:32:59 investigation file.

10:33:00 Q. Okay, so the original Sheriff's Department 10:33:03 investigation file was kept at the Grand Jury room in the 10:33:07 DA's office, correct?

10:33:08 A. At some point it was moved to there, yes.

10:33:12 Q. And you don't know when that was.

10:33:12 A. I think I testified I don't have a clear 10:33:14 recollection of that.

10:33:15 Q. All right, and is it your testimony on direct

10:33:18 examination that the Sheriff's Department also had their
10:33:19 own separate file besides the one that was stored at the
10:33:26 DA's Office Grand Jury room?

10:33:27 **A.** The file that was located within the District
10:33:33 Attorney's Office was the Sheriff's Department
10:33:35 investigation file.

10:33:36 **Q.** So there was only one file, correct?

10:33:39 **A.** Yes. That was the investigation file.

10:33:41 **Q.** There was no separate file being kept away from the
10:33:46 District Attorney's Office in the Sheriff's Department
10:33:49 office itself.

10:33:50 MR. MOODY: Objection. We covered this three
10:33:52 times.

10:33:53 MS. BIANCO: Well, he hasn't answered. He's
10:33:54 spinning around in circles.

10:33:56 THE COURT: How would he know if it was
10:33:58 kept --

10:33:59 MS. BIANCO: That's why I'm asking him do you
10:34:01 know. He testified on direct that some of the stuff
10:34:02 was sent back to the Sheriff's Department.

10:34:02 THE COURT: That wasn't your question. Was
10:34:04 there. The question is do you know if there was.

10:34:06 **Q.** Well, do you know if there was a separate file being
10:34:08 kept at the Sheriff's Department?

10:34:10 **A.** No.

10:34:10 **Q.** Did you testify on direct examination that sometimes
10:34:13 you would send materials back to the Sheriff's Department?

10:34:18 **A.** When materials were received at the District
10:34:24 Attorney's Office, depending upon where the file was
10:34:27 geographically at that time, either in the Sheriff's Office
10:34:30 or subsequent when it was moved to the DA's Office, that
10:34:33 the documents received by the District Attorney's Office
10:34:36 would then be given to Investigator Whipple, placed into
10:34:39 the inbox as part of the Sheriff's Department
10:34:42 investigation, yes.

10:34:43 **Q.** Did you mail him the information back or did you
10:34:46 hand it to him?

10:34:47 **A.** There was no mailing. If documents were received at
10:34:51 the Oswego County District Attorney's Office, they would be
10:34:55 hand delivered to Investigator Whipple if he was there or
10:35:00 Officer Cromie who was also tasked to help Investigator
10:35:04 Whipple and placed into the in-basket, that was the in-
10:35:07 basket for ongoing information to be part of the Sheriff's
10:35:13 Department investigation.

10:35:14 **Q.** Is it your testimony that some of the information
10:35:17 came directly to the District Attorney's Office and did not
10:35:20 go to the Sheriff's Department, is that your testimony?

10:35:23 **A.** Absolutely not.

10:35:24 **Q.** So all of the information went straight to the
10:35:27 Sheriff's Department?

10:35:28 **A.** No, ma'am. You're misconstruing what I said again.
10:35:33 It was received by the District Attorney's Office. It was
10:35:35 date stamped as received. Thereafter, the document was
10:35:39 placed into the in-basket if you will or physically given
10:35:43 to Investigator Whipple or to Bill Cromie.

10:35:46 **Q.** But the information you're talking about right now
10:35:49 was information that was directed to the District
10:35:52 Attorney's Office and then you would put it in the in-
10:35:54 basket, correct?

10:35:55 MR. MOODY: Judge, what information are we
10:35:56 talking about right now?

10:35:57 THE COURT: First off what information? What
10:36:00 are you trying to establish?

10:36:00 MS. BIANCO: Well, Judge, there's this
10:36:02 procedure that's supposed to be in place that we heard
10:36:04 from Investigator Whipple that he got everything,
10:36:07 everything. And now we're hearing he's getting
10:36:09 information at the District Attorney's Office. Well,
10:36:12 which is it?

10:36:12 THE COURT: I can think of one document so far
10:36:15 testified he said he brought it over that day to
10:36:17 Whipple.

10:36:17 MS. BIANCO: Well, I don't know if there is
10:36:19 one document or not.

10:36:19 THE COURT: Then ask him.

10:36:20 **Q.** How many documents did you get at the District Attorney's Office directly that didn't go to the Sheriff's Office first?

10:36:25 **A.** I have no clear recollection of the amount of documents, Ms. Bianco. I can say with certainty, one-hundred percent certainty, that documents that were received at the Oswego County District Attorney's Office that were part of the investigation would be date stamped as received by the Oswego County District Attorney's Office and then the document would also be given to the Sheriff's Department, Investigator Whipple or Cromie in the inbox. It may have come to pass under certain circumstances documents were submitted to both entities, but as to the documents that were submitted to the District Attorney's Office, with certainty, those documents were then given to Investigator Whipple or Officer Cromie to be made part of the Sheriff's Department investigation report.

10:37:16 **Q.** So any document that came to your office, did you date stamp it always?

10:37:22 **A.** The procedure that I put in place and if it was associated with this case is that it was to be date stamped, yes.

10:37:28 **Q.** So if it came from the Sheriff's Department to your office, you date stamped it?

10:37:32 **A.** As part of this investigation?

10:37:34 **Q.** Yes.

10:37:34 **A.** Yes.

10:37:35 **Q.** Now there were a number of different leads in this particular case, is that fair to say?

10:37:42 **A.** In excess of fifteen-hundred, yes, ma'am.

10:37:44 **Q.** And some of those -- they're from all different forms, correct, different types of leads?

10:37:49 **A.** Different sources.

10:37:50 **Q.** Yes.

10:37:51 **A.** And different substantive information, yes.

10:37:55 **Q.** Some were for example anonymous phone calls, correct?

10:37:59 **A.** Yes.

10:37:59 **Q.** Some were hang up calls. They were given lead numbers?

10:38:04 **A.** I don't recall any hang up calls that were given lead numbers.

10:38:10 MR. MOODY: Judge, I'm going to object to the relevance of --

10:38:11 THE COURT: Yeah. Where are you going, Ms. Bianco?

10:38:14 MS. BIANCO: Well, Judge, I'm going to get to the relevance about what specifically he stated he turned over and what was given as leads. If you want me to go forward --

10:38:22 THE COURT: Let me ask why is it relevant whether the document from the Sheriff's Department went to the DA's Office first and then went to the Sheriff's Department or came to the Sheriff's Department first. Why's that relevant? Somebody -- somebody violated Whipple's procedure. It's not this witness's fault. Why's it relevant?

10:38:37 MS. BIANCO: Well, Judge, the point is there was no -- that there was no verifiable procedure.

10:38:41 THE COURT: You're asking about Whipple's procedures. He didn't create Whipple's procedure. Somebody violates -- Whipple's procedure is violated, why is it relevant?

10:38:49 MS. BIANCO: It's relevant because there supposed to be these procedures to copy all the documents.

10:38:52 THE COURT: Are you -- are you going to be able to ask him a question as to whether or not he failed to produce documents? That's relevant.

10:38:57 MS. BIANCO: Fine. I'll ask him that.

10:38:59 THE COURT: That's fine. Get to the point.

10:39:37 MS. BIANCO: May I approach the witness, Judge?

10:39:38 THE COURT: Yes.

10:39:39 **Q.** Showing you what's been marked as Defendant's

10:39:41 Exhibit 13. I'm not sure if thirteen is --

10:39:45 MS. PEEBLES: It's in evidence.

10:39:46 MS. BIANCO: I'm going to get the original
10:39:47 then.

10:39:58 **Q.** Showing you what's been marked Defendant's Exhibit
10:40:03 13, is this a letter that you wrote to Attorney Joseph
10:40:08 Fahey?

10:40:13 **A.** Yes. This was a letter that was drafted by myself
10:40:26 with a date of December twenty-first, 1994 sent to Attorney
10:40:30 Fahey.

10:40:31 **Q.** And in that particular letter, you tried to be
10:40:35 thorough and complete as to what documents that you had
10:40:39 provided to Attorney Fahey, is that right?

10:40:44 **A.** It describes, Ms. Bianco, what information had been
10:40:57 made available to Mr. Fahey and some measure of specificity
10:41:02 in terms of the specific substance, yes.

10:41:05 **Q.** Is it five pages, single space?

10:41:08 **A.** It would appear to be five pages, single spaced,
10:41:13 yes.

10:41:13 **Q.** In that letter, don't you go so far as to detail the
10:41:17 fact that there was hang up calls as part of the leads,
10:41:20 correct?

10:41:20 **A.** I'd have --

10:41:21 **Q.** Page three.

10:41:22 **A.** I'd have to look, Ms. Bianco

10:41:23 **Q.** Okay.

10:41:24 (Whereupon, there was a pause in the proceeding.)

10:42:18 **A.** At page three of the letter, in the letter it contains the statement "anonymous telephone calls, anonymous letters."

10:42:34 **Q.** Things about psychics, they were given lead numbers, correct?

10:42:37 MR. MOODY: Objection, Judge. We're back still -- I mean --

10:42:39 THE COURT: Are you going to ask him a question as to whether or not he failed to produce a document to the Sheriff's Department? That's what you said you were going to do.

10:42:45 MS. BIANCO: Well, Judge, I want to talk about how detailed he is in the letter and why he didn't put the other things in there.

10:42:50 THE COURT: How is that relevant to whether or not he produced or failed to produce a document for the Sheriff's Department?

10:42:56 MS. BIANCO: I think it's relevant if he's detailed enough to put in things about psychics and hang up calls and anonymous tips, then there should be something about the confidential informant in that letter.

10:43:06 THE COURT: Get to your point very quickly.
10:43:08 You're starting to try me.

10:43:19 MS. BIANCO: May I have a moment, Your Honor?

10:43:20 THE COURT: Sure.

10:43:21 (Whereupon, there was a pause in the
10:43:49 proceeding.)

10:43:49 **Q.** Referring to page five on Exhibit 13, you list a
10:43:53 number of Oswego County Sheriff's Department officers that
10:43:58 you were providing reports from, is that correct?

10:44:11 **A.** Page five does reference different police agencies
10:44:23 that had provided not only page five but page four and five
10:44:28 list.

10:44:28 **Q.** The bottom of page five, do you list a number of
10:44:32 investigators from the Oswego County Sheriff's Department
10:44:36 that you provided reports from?

10:44:48 **A.** Yes. In part, yes.

10:44:49 **Q.** And you list thirteen officers, is that right?

10:44:53 **A.** Do you want me to count them, ma'am?

10:44:54 **Q.** Well, I'll go through them with you. You listed
10:44:56 Investigator Cromie.

10:44:58 MR. MOODY: I'm going to object, Judge. Are
10:45:00 we going to have a specific document or a specific
10:45:02 report that we're talking about or we just talking
10:45:05 about all the different investigators?

10:45:06 THE COURT: Where are we going, Ms. Bianco?

10:45:08 **Q.** Well, you listed a number of Sheriff's Department
10:45:11 investigators. You don't list anywhere on that document
10:45:13 that you had a report from sheriff -- from Investigator
10:45:15 VanPatten do you?

10:45:17 **A.** I --

10:45:18 **Q.** On that document.

10:45:19 **A.** I absolutely do set forth in this document that
10:45:23 Investigator VanPatten's report was provided, yes.

10:45:26 **Q.** VanPatten is listed on that. Can you show me where?

10:45:30 **A.** Sure. I absolutely can.

10:45:36 **Q.** And I'm speaking about his December ninth report
10:45:38 specifically.

10:45:44 **A.** You said the December ninth report?

10:45:46 **Q.** December ninth.

10:45:47 **A.** In page three of the exhibit you handed me to
10:45:50 Attorney Fahey on December twenty-first, 1994, specifically
10:45:54 I state, "In the motion presently filed in County Court,
10:45:58 you demanded all, quotation marks "Brady material" you
10:46:01 presently are in possession of, Oswego County Sheriff's
10:46:04 Department criminal investigation report relative to the
10:46:07 facts and circumstances involving the kidnapping of Heidi
10:46:10 Allen. To the extent that there is any potential evidence
10:46:15 or information property that may in fact or may tend to be
10:46:19 exculpatory, it is included." Specifically, I referenced
10:46:24 the Sheriff's Department investigation report which

10:46:26 included the report that you're referencing, Christopher
10:46:31 VanPatten, of December nine, 1994.

10:46:34 **Q.** It says that in that letter Christopher VanPatten's
10:46:36 December nine, 1994, that's my question, does it say that
10:46:39 in that letter?

10:46:40 **A.** It says the Sheriff's Department investigation
10:46:43 report. It does.

10:46:44 **Q.** Does it say, this is a yes or no question,
10:46:47 Christopher VanPatten report, does it say that there?

10:46:52 **A.** At a particular page?

10:46:55 **Q.** I'm looking -- I was looking at page five, the
10:46:57 bottom of, but if you can find it anywhere in that letter
10:47:00 that says --

10:47:01 MR. MOODY: Objection, Judge. Argumentative.

10:47:03 THE COURT: Thank you. Sustained.

10:47:05 **Q.** Could you show me in that letter where it says
10:47:09 Christopher VanPatten's December nine, 1994 report, that
10:47:16 specific.

10:47:28 (Whereupon, there was a pause in the
10:47:51 proceeding.)

10:47:51 **A.** I did not type in Chris VanPatten's name, no.

10:47:54 **Q.** Okay, how about Investigator VanPatten, Exhibit 9.
10:48:11 Investigator VanPatten is the one who authored a report
10:48:16 about the confidential informant document, correct?

10:48:19 **A.** Could I look at the exhibit, ma'am?

10:48:20 **Q.** Absolutely.

10:48:30 **A.** Yes. Exhibit 9 is a report by Deputy VanPatten received DA's Office December ninth, 1994, yes.

10:48:38 **Q.** Okay, and that particular report is not referenced in that letter.

10:48:43 **A.** It absolutely is in fact in the letter, Ms. Bianco.

10:48:47 **Q.** By name it says --

10:48:49 **A.** By reference to the Oswego County Sheriff's Department investigation report. I just read to you, I'll read it again, but in fact I referenced the Oswego County Sheriff's Department investigation report which contained Deputy VanPatten's report on the specific issue of whether or not it may tend to be exculpatory and be Brady material, yes, ma'am.

10:49:11 **Q.** Okay, my next question is Investigator Montgomery's December eighth, 1994 report. In your letter specifying what you gave to Judge Fahey, does it reference specifically, specifically, yes or no, Investigator Montgomery's December eighth, 1994 report?

10:49:35 **A.** Yes, it does specifically reference it.

10:49:38 **Q.** Where in the letter does it specifically reference it?

10:49:42 **A.** Page three. "In the motion presently filed in County Court, you demanded all "Brady material." You presently are in possession of the Oswego County Sheriff's

10:49:59 Department criminal investigation report relative to the facts and circumstances involving the kidnapping of Heidi Allen. To the extent that there is any potential evidence or information property that may tend -- may in fact or may tend to be exculpatory, it is included in the investigation report that you now have in your possession." It specifically referenced that document that you hold in your hand.

10:50:23 **Q.** So you're stating in that letter just so I'm clear that it says the name, specifically it says Investigator Montgomery, it says Investigator Montgomery's report specifically by name in that letter.

10:50:38 **A.** It says the Oswego County Sheriff's Department investigation report. Mr. Montgomery was an investigator for the Oswego County Sheriff's Department, one of many that were tasked to this.

10:50:48 THE COURT: Ms. Bianco, what does it matter if he mentions Montgomery's name specifically? He's referencing the file. The relevant question were these reports in the file. That seems to be the relevant question.

10:51:00 MS. BIANCO: Well, Judge, he's detailed every single thing.

10:51:03 THE COURT: So why's he have to detail everything by name?

10:51:05 MS. BIANCO: Well, that's what he did in that letter. Why are these names not there, that's the point.

10:51:10 THE COURT: What's the relevance? He said the file is there. Move on, Ms. Bianco.

10:51:14 MS. BIANCO: Judge, are you precluding me --

10:51:16 THE COURT: Yes, a relevant line -- it's a -- the line of questioning makes no sense unless you can show me that this witness is somehow responsible for the two defense attorneys' review of the file. And the question is, Mr. Dodd, were those exhibits that she's referenced in the Oswego County Sheriff's Department file?

10:51:33 THE WITNESS: Yes, sir, in fact they were.

10:51:34 THE COURT: There we go. There's your answer. Move on, Ms. Bianco.

10:51:38 MS. BIANCO: Judge, are you prohibiting me from talking about the contents of that letter and all the detail in that letter?

10:51:44 THE COURT: You have yet to get to the point that you said --

10:51:47 MS. PEEBLES: Your Honor --

10:51:47 THE COURT: Hold on. Twenty-five minutes ago you said you were going to ask him a line of questioning about whether or not he's failed to produce

10:51:53 documents. Do you have proof he's failed to produce
10:51:56 documents?

10:51:56 MS. BIANCO: Absolutely, Judge. That letter
10:51:57 shows he failed to produce documents. It shows what he
10:52:00 produced and it shows what he didn't produce.

10:52:02 THE COURT: It absolutely does not. That is
10:52:04 the most abstract argument.

10:52:07 MS. PEEBLES: Judge --

10:52:08 THE COURT: Hold on. I'm not done talking
10:52:10 yet. Because he does not specifically say those --
10:52:13 those specific reports, he testified they were part of
10:52:17 the file. End of the question.

10:52:19 MS. BIANCO: Well, Judge, then why did he list
10:52:21 every single thing else, name, specific names, specific
10:52:25 agencies, specific things.

10:52:27 THE COURT: Because he's trying to be as
10:52:28 detailed as humanly possible. Ms. Peebles, your
10:52:31 argument?

10:52:31 MS. BIANCO: Right. And the most significant
10:52:33 documents are not in there and it's not detailed.

10:52:35 THE COURT: Part of the Oswego County
10:52:38 Sheriff's Department file period. Yes, Ms. Peebles.

10:52:40 MR. PEEBLES: Judge, it appears to me that you
10:52:42 are prohibiting us from impeaching Mr. Dodd with his
10:52:45 own letter from your defense counsel. You're simply

10:52:47 asking us to take his word for it when he says he --

10:52:49 THE COURT: No, no, no. Ask a specific
10:52:50 question. Was his name listed. He answered yes or no.

10:52:53 MS. PEEBLES: And the idea that -- the idea
10:52:54 that his meticulous nature, detailed nature where he
10:52:57 himself --

10:52:58 THE COURT: Move on, Ms. Bianco. I'm done.
10:53:01 Move on.

10:53:02 **Q.** Did you testify on direct examination that Exhibit
10:53:17 LLL was the original document regarding the Heidi Allen
10:53:22 confidential informant information because it had green
10:53:25 marks on the top?

10:53:26 **A.** I'd have to look at it, miss.

10:53:28 **Q.** Certainly.

10:53:29 **A.** Do you want these back?

10:53:31 **Q.** Yes, please.

10:53:35 **A.** Thank you.

10:53:36 (Whereupon, there was a pause in the
10:53:42 proceeding.)

10:53:42 **A.** I'm reviewing the documents that were contained in
10:53:45 LLL which has a green mark on page one. I believe I
10:53:49 testified they appear to be the original documents, yes.

10:53:52 **Q.** They appear to be the original because those had the
10:53:55 green marks on them, correct?

10:53:58 **A.** The green marks were affixed to the original Oswego

10:54:01 County Sheriff's Department investigation report to
10:54:03 evidence that it was being reproduced. This has a green
10:54:07 mark. By logic it's my conclusion that this appears to be
10:54:11 a portion of the original. It appears to be, ma'am.

10:54:14 **Q.** Okay, and if you look on the second page of that
10:54:18 document, it has two date stamps, is that correct?

10:54:22 **A.** Yes, it does.

10:54:23 **Q.** Okay, and on the date stamp it's May twenty-third,
10:54:27 1995 from the Sheriff's Department, correct?

10:54:32 **A.** Yes, sir, or ma'am, that's one of them.

10:54:34 **Q.** And the other date stamp is what?

10:54:37 **A.** That would be May sixteenth, 1995, the District
10:54:40 Attorney's date stamp.

10:54:42 **Q.** Okay. Now, you sent a letter to the defense counsel
10:54:49 you stated on May seventeenth, 1995 disclosing this report,
10:54:57 is that right, the first letter.

10:55:00 **A.** I have been shown a lot of letters. Do you have the
10:55:02 letter that you can show to me to refresh my memory, miss?

10:55:05 **Q.** Certainly. Showing you People's JJJ.

10:55:13 THE COURT: Is that the May seventeenth
10:55:14 letter?

10:55:15 MS. BIANCO: Yes.

10:55:18 **A.** My recollection is refreshed that on May seventeen,
10:55:21 1995 I did send to Attorney Walsh and Fahey additional
10:55:27 discoverable property, yes.

10:55:28 **Q.** Okay, and is it your contention that on May seventeenth, you sent the Heidi Allen confidential informant information to Attorney Fahey?

10:55:42 **A.** I believe when I was shown the exhibit that's received in evidence by Mr. Moody that had the affixed documents as to a portion of LLL, yes. As to a portion of LLL that you showed to me, this was contained within the May seventeenth, 1995 letter. However, the reports from VanPatten, Montgomery December ninth, 1995 had previously been disclosed and provided to Mr. Fahey and Mr. Walsh prior to that on December fourteenth, 1994.

10:56:22 **Q.** My question to you, sir, your letter dated May seventeenth, Exhibit JJJ, purports to send the confidential informant documents to Attorney Fahey on that date, correct?

10:56:39 **A.** It attached additional documents. It did not attach documents that had already in fact been given to Attorney Fahey and Attorney Walsh on December fourteenth, 1994. They had already been disclosed and provided to both counsel. It did not again include those documents. It included subsequent discovery under 240.60.

10:57:05 **Q.** So the documents that you have in your hand that you contend are the originals with the date stamp May twenty-third, 1995 with the green mark on it, this was not sent to Attorney Fahey?

10:57:22 **A.** I believe I testified that I --

10:57:24 MR. MOODY: Your Honor, can we have a time
10:57:25 frame when?

10:57:26 MS. BIANCO: I'm trying to get that.

10:57:27 MR. MOODY: We have been talking about two
10:57:29 different time periods, December and May.

10:57:31 THE COURT: Can you be --

10:57:32 MS. BIANCO: He's talking about two different
10:57:33 time periods, I'm not.

10:57:34 THE COURT: Ms. Bianco, just give a specific
10:57:38 time frame please.

10:57:39 **Q.** May seventeenth you sent a letter to Judge Fahey,
10:57:42 correct, and Judge Walsh.

10:57:44 **A.** Yes.

10:57:44 **Q.** Excuse me, attorneys Fahey and Walsh, correct?

10:57:46 **A.** And with respect to both of them, I know them as
10:57:49 lawyers at the time, that's why I reference them as
10:57:51 attorneys.

10:57:51 **Q.** Okay, and the original document, the May
10:57:56 twenty-third, 1995 stamped document where it's stamped in
10:58:03 where you say this is the original with the green mark, are
10:58:06 you saying that this was sent on May seventeenth, a week
10:58:11 before it was written?

10:58:12 **A.** I would have to specifically look at the exhibit
10:58:15 that's received that includes the entirety of the contents

10:58:19 that I sent on May seventeen to be able to compare what it
10:58:23 is that is included in that document, to compare it to the
10:58:27 document that you have in your hand. I would have to look
10:58:29 at it.

10:58:30 **Q.** Okay. We'll do that. Is it your contention that
10:58:35 you sent documents to Judge Fahey and Walsh before you put
10:58:42 it or had it placed in the Sheriff's Department original
10:58:45 file with a stamp on it, is that your contention?

10:58:47 MR. MOODY: Which documents are we talking
10:58:49 about?

10:58:49 THE COURT: I think the general question was
10:58:51 specifically talking about that document.

10:58:53 MS. BIANCO: I'm talking about that document,
10:58:54 Judge, yes.

10:58:54 THE COURT: That document specifically.

10:58:55 **A.** Again, I would have to look at the original exhibit
10:58:58 that's received, miss. I would have to to refresh my
10:59:00 memory. It's I believe it's a People's exhibit.

10:59:04 **Q.** It's People's Exhibit JJJ and I believe it's LLL?
10:59:14 LLL.

10:59:18 **A.** So I'm -- I'm reviewing JJJ.

10:59:19 **Q.** Review it to yourself please.

10:59:22 (Whereupon, there was a pause in the
10:59:27 proceeding.)

10:59:27 **A.** Yes. I've reviewed JJJ.

10:59:29 **Q.** Now please review LLL.

10:59:32 (Whereupon, there was a pause in the proceeding.)

10:59:37 **A.** I reviewed LLL.

10:59:39 **Q.** LLL is what you testified on direct examination to what you believe was the original, correct?

10:59:45 **A.** May have been, yes.

10:59:46 **Q.** Well, it may have been because this comports with your green mark system, correct?

10:59:55 **A.** Ms. Bianco, the -- by reason --

11:00:01 **Q.** That's a yes or no question.

11:00:02 **A.** No, it's no.

11:00:03 MR. MOODY: Objection, Judge.

11:00:04 THE COURT: It's already been answered for one thing so I don't think you have to answer the question. It's kind of a side question. You've already answered the question.

11:00:10 THE WITNESS: Yes, sir.

11:00:11 **Q.** Is it your testimony that you sent documents to defense counsel, those particular documents, the CI documents, before you gave it to Investigator Whipple to file it in the main file, is that your testimony?

11:00:27 **A.** JJJ dated May seventeen, 1995 which included -- in part included a portion of LLL, yes, in fact, on May seventeen, 1995 the District Attorney's Office, me

11:00:51 specifically, sent to counsel's Walsh and Fahey a portion
11:00:55 of that which you have handed to me which is in LLL, yes.

11:01:01 **Q.** And that portion that you sent to Attorney Fahey and
11:01:06 Attorney Walsh did not have a Sheriff's Department stamp on
11:01:10 it, is that correct?

11:01:12 **A.** It had not been date stamped by the Sheriff's
11:01:15 Department on LLL. It has a date stamp of May
11:01:19 twenty-third, 1995 because I wanted to get this out as
11:01:23 promptly as I could. On the day after we received it, May
11:01:28 sixteenth, it was sent to attorneys Walsh and Fahey prior
11:01:31 to a date stamp being affixed to it, yes.

11:01:34 **Q.** So if Attorney Walsh had only in his record
11:01:38 something that said May twenty-third and May sixteen, you
11:01:42 would agree it would have been impossible for you to have
11:01:45 sent the May sixteenth letter, correct?

11:01:46 **A.** I can't even pretend to speculate.

11:01:48 MR. MOODY: Objecting, Judge, as to what Judge
11:01:51 Walsh had in his file.

11:01:51 THE COURT: Sustained.

11:01:53 **Q.** So you didn't follow your own procedure on that
11:01:57 occasion by giving it to Investigator Whipple to put in the
11:02:01 file before you sent it to Attorney Fahey, yes?

11:02:05 **A.** Absolutely incorrect. I did follow the procedure.
11:02:08 The procedure again is that when it was received by the
11:02:11 District Attorney's Office, it was date stamped.

11:02:14 **Q.** And it didn't go to the Sheriff Department?

11:02:15 **A.** Do you want to hear the rest of the answer, ma'am,
11:02:17 or not?

11:02:18 THE COURT: Hold on. No fighting back and
11:02:21 forth. You asked a question, he's answering the
11:02:22 question. Continue to answer the question.

11:02:24 **A.** That there -- that document that was received DA's
11:02:30 Office May sixteenth, 1995 was then given to Investigator
11:02:35 Whipple or Cromie and placed into their inbox for the
11:02:40 purposes of it being part of the Sheriff's Department
11:02:42 investigation report and it was date stamped. It may have
11:02:46 already been in the Sheriff's Department investigation
11:02:49 report. All I know is that when I received it on May
11:02:53 sixteenth, I got it out as quickly as I could May
11:02:56 seventeenth to counsels Walsh and Fahey.

11:02:59 **Q.** Okay. So when you say that the LLL is the original,
11:03:13 it wasn't the original.

11:03:15 MR. MOODY: I'm going to object, Judge. We're
11:03:16 talking about two different documents, and LLL contains
11:03:19 at least two different pieces of paper that are not in
11:03:21 JJJ.

11:03:22 THE COURT: I sustain it. I sustained it.

11:03:23 **Q.** Are there more than one original of these documents?

11:03:27 THE COURT: Which document?

11:03:28 MS. BIANCO: The documents of the confidential

11:03:29 informant file, the one with the green marks on it. Do
11:03:32 you make multiple originals?

11:03:34 THE COURT: Hold on. He's already --

11:03:35 MR. MOODY: Argumentative, Judge.

11:03:36 THE COURT: He's already answered the question
11:03:38 about how he believes it's the original. He's already
11:03:42 answered it four times you've asked the question.
11:03:44 Don't ask it a fifth time.

11:03:45 **Q.** You testified a few moments ago that you would not
11:03:47 send the same document twice, is that right?

11:03:51 **A.** Yes, we -- but I am sure that there were times when
11:03:55 a -- documents were sent, the same document was sent more
11:03:58 than one time, yes.

11:04:01 **Q.** Okay, and on Exhibit SS, showing you a portion of
11:04:22 SS, a document concerning the confidential informant file,
11:04:28 could you review that to yourself please?

11:04:29 **A.** Yes.

11:04:31 THE COURT: The entire document SS or just a
11:04:35 portion?

11:04:35 MS. BIANCO: Just a portion of the SS as it
11:04:37 relates to the confidential informant information.

11:04:40 **A.** The document you handed me is part of Exhibit SS?

11:04:43 **Q.** Yes, part of SS.

11:04:44 **A.** Oh, part of SS.

11:04:45 **Q.** Right. That's the one that had the yellow cover

11:04:48 letter.

11:04:48 THE COURT: Had the rubber band around it.

11:04:51 **Q.** With the rubber band?

11:04:52 **A.** I have reviewed three pieces of paper that are part 11:04:54 of SS.

11:04:55 **Q.** And on SS, it's your contention that you sent this 11:05:03 particular document to Judge Fahey as well, correct?

11:05:07 **A.** I'd have to look at the May seventeenth letter 11:05:09 again, miss, to see what the file enclosures were. There's 11:05:14 a significant amount of material. To be precise as I can, 11:05:17 I need to look at the documents that were affixed to the 11:05:20 May seventeenth letter.

11:05:21 **Q.** Certainly. So the June -- I'm showing you the June 11:05:26 fifth letter which is SS, that's what we're talking about 11:05:29 now, the yellow letter. Nowhere in that yellow letter does 11:05:35 it mention specifically anything about the confidential 11:05:39 informant file, correct?

11:05:46 **A.** The June fifth, 1995 letter designated SS does not.

11:06:07 **Q.** Does not have a green mark that it was previously 11:06:08 disclosed, is that correct?

11:06:11 **A.** That document if I could again look at it please.

11:06:17 MS. BIANCO: I don't mean to be presumptuous, 11:06:20 Judge, if I can approach the witness when he says that.

11:06:22 THE COURT: That's fine.

11:06:22 **A.** I'm looking at the documents that you have handed to

11:06:25 me, miss. These documents do not contain a green mark.
11:06:29 These documents were in fact, in fact, disclosed to
11:06:32 attorneys Walsh and Fahey, in fact.

11:06:35 **Q.** Well, in fact, it doesn't have your green mark,
11:06:38 correct?

11:06:38 **A.** I can tell you that Exhibit LLL that you handed to
11:06:48 me does in fact have the green mark, and LLL, the top page,
11:06:54 is the exact top page of the documents that you handed to
11:06:59 me a moment ago, so in fact, LLL contains the green mark
11:07:06 indicating that this document and the attached documents
11:07:09 were disclosed to counsels Fahey and Walsh even though the
11:07:12 piece of paper that you handed me do not have it.

11:07:16 **Q.** So will you agree that not every document that was
11:07:18 disclosed to the defense had a green mark on it?

11:07:26 MR. MOODY: I would object, Judge. As he
11:07:28 explained before, I think the problem is the copies
11:07:31 that are attached to SS are not necessarily the ones
11:07:34 that would have the green mark because he explained the
11:07:37 procedure, the original went back to the Sheriff's
11:07:39 Department, had the green mark.

11:07:40 THE COURT: Right. I'll sustain.

11:07:42 MS. PEEBLES: Where are the originals? I
11:07:43 guess that's the question. How come we don't have the
11:07:45 originals?

11:07:46 MR. MOODY: Well, that's one of the reasons

11:07:47 that I have a whole bunch of plastic pieces of plastic
11:07:51 bags that have -- and I have Dale MacDonald on the list
11:07:54 who is the current evidence technician for the
11:07:57 Sheriff's Department as that all of the bag marks are
11:08:02 the exact reproductions, colored copies of the
11:08:04 originals. The originals are still in the Sheriff's
11:08:07 Department file.

11:08:08 MS. BIANCO: Judge, I think this is just a
11:08:10 simple question. He said every time something goes to
11:08:13 the defense it has a green mark. That's how he knows
11:08:15 it's disclosed.

11:08:16 THE COURT: No, no, the original has a green
11:08:18 mark to show that it's been disclosed. The copy to
11:08:22 the -- he never testified that the copy out to the
11:08:24 attorneys or to the Court for that matter had the green
11:08:26 mark.

11:08:27 MS. BIANCO: I'll ask him those questions.

11:08:29 THE COURT: He's already asked and answered
11:08:31 them but go ahead.

11:08:32 **Q.** Well, is every time a document was sent to the
11:08:34 attorneys Walsh and Fahey, would they have had a green mark
11:08:39 on their document?

11:08:40 **A.** The documents that were sent --

Q. Right.

11:08:42 **A.** -- to Fahey and Walsh, no. The original file, Ms.

11:08:47 Bianco, from which the exact reproductions were made, the requirement was that the person photocopying that portion of the file was required to evidence that in fact had been photocopied to place on to the original Sheriff's Department investigation report or component part of the report the green mark to evidence it had been reproduced. That did not mean that the copies that went to the defense attorney may have had the green marks on them.

11:09:17 **Q.** Would you agree that when you have a green mark on it, it doesn't state the date that it was sent to the attorneys?

11:09:24 **A.** I know the dates it was sent, Ms. Bianco.

11:09:26 **Q.** I'm asking you is there any record specifically with the green mark on those papers as the dates that those materials were sent?

11:09:34 **A.** Yes.

11:09:35 MR. MOODY: Those materials. Again, we got a number of exhibits that we have been discussing in the last five --

11:09:40 THE COURT: Can you specify which document? Are you talking about those in front of him as LLL and SS?

11:09:46 THE WITNESS: This is LLL. I put it back in the bag. I don't know what this is. And this is SS.

11:09:52 THE COURT: It's a portion of SS.

11:09:54 MS. BIANCO: Okay.

11:09:56 MR. MOODY: Does he have all of SS in front of
11:09:59 him?

11:09:59 MS. BIANCO: No. He has only a portion of SS,
11:10:02 just this one document.

11:10:03 MR. MOODY: I guess I misunderstood. It might
11:10:05 be better if we're going to hand him SS if we hand him
11:10:07 the whole thing so there's no question as to where all
11:10:10 these documents are coming from.

11:10:11 THE COURT: That seems fair.

11:10:12 MS. BIANCO: I'm sorry, Judge.

11:10:14 THE COURT: That seems fair, then you can make
11:10:16 reference to that particular portion.

11:10:18 MS. BIANCO: Absolutely.

11:10:18 **Q.** So could you tell me which is the original, LLL or
11:10:25 JJJ? Can you tell me which one is the original?

11:10:29 **A.** Original what?

11:10:31 **Q.** Original document. That's what we're talking about.

11:10:34 THE COURT: That's a whole different line of
11:10:36 questioning.

11:10:36 MS. BIANCO: Well, Judge, I'm completely
11:10:38 confused about what's original, what's not. I mean
11:10:41 he's -- he's swirling around. I can't pin him down for
11:10:43 anything.

11:10:44 THE COURT: No, he has absolutely testified on

11:10:46 three or four different occasions why he thought LLL
11:10:49 was the original document.

11:10:50 MS. BIANCO: But which one is the original,
11:10:52 Judge, that's all I want to know, which one of those
11:10:54 two documents.

11:10:55 THE COURT: Based upon his belief, it's LLL.
11:10:57 He's answered that four times.

11:10:58 **Q.** Okay, so the other document that has a green mark on
11:11:02 it is not the original, the one that -- you have two in
11:11:05 your hand.

11:11:06 MR. MOODY: Can we have a specification when
11:11:08 you say "other document?"

11:11:10 MS. BIANCO: I'll have to take it back and
11:11:12 look at it.

11:11:12 THE WITNESS: I'm handing back JJJ.

11:11:15 **Q.** JJJ has a green mark on it, correct? Is that the
11:11:18 original?

11:11:18 **A.** No, ma'am. LLL you just handed to me does have a
11:11:22 green mark on page one.

11:11:24 **Q.** Okay, and JJJ also has a green mark on page one
11:11:30 doesn't it?

11:11:34 **A.** JJJ letter May seventeen, 1995 does have a green
11:11:40 mark on page one, yes.

11:11:42 **Q.** Are they referencing the same group of documents?

11:11:52 **A.** Well, not only they're referencing it, they're in

11:12:07 major respect identical in Exhibit JJJ at page one with a date stamp received DA's Office May sixteen, 1995. When I compare that page one to LLL page two, that it is identical with one distinction. The distinction that on the LLL document there's a date stamp received by the Sheriff's Department Oswego County of May twenty-third, 1995 and some additional handwriting on the typed report that I believe to be Investigator Whipple. I believe to be. The page two of JJJ does not contain the May twenty-third, 1995 date stamp from the Sheriff's Department and it does not contain the apparent writing of Investigator Whipple.

11:13:05 **Q.** But they both purport to be originals, correct?

11:13:09 **A.** They're not originals, miss. I say again they're not originals. They are photocopies. Photocopies. Exact reproductions.

11:13:18 **Q.** With green lines on them?

11:13:20 **A.** I don't understand your question again.

11:13:23 MS. BIANCO: May I have a moment, Your Honor?

11:13:26 THE COURT: Sure.

11:13:27 (Whereupon, there was a pause in the proceeding.)

11:14:39 THE COURT: Go ahead, Ms. Bianco.

11:14:41 MS. BIANCO: Thank you, Your Honor.

11:14:42 **Q.** I'm going to change direction a little bit. On Exhibit SS with your cover letter dated June fifth, 1995, 11:14:55 do you remember sending this to the defense?

11:14:58 **A.** Can I again look at it, miss?

11:15:01 THE COURT: What was the date again, June
11:15:03 fifth?

11:15:03 MS. BIANCO: SS, June fifth.

11:15:05 THE COURT: June fifth, thank you.

11:15:10 **Q.** (Handing).

11:15:18 **A.** It appears you comingle things, but yes, June fifth,
11:15:22 1995 is yellow. There are some items that are rubber
11:15:28 banded together which would reflect that it was part of the
11:15:32 attachment, but no longer rubber banded are these
11:15:35 additional documents that have been severed out and have a
11:15:38 green sticky on it.

11:15:39 **Q.** So the green sticky, that -- that document was not
11:15:42 in the June fifth letter, is that your testimony?

11:15:44 **A.** What I'm saying, miss, is that you --

11:15:48 THE COURT: He's saying that somebody's taken
11:15:48 the rubber band off and there seems to be not
11:15:50 everything rubber banded back together.

11:15:52 **Q.** I'm trying to find out if he knows what was in the
11:15:55 package.

11:15:55 THE COURT: I think he --

11:15:56 **A.** What I -- if that's a question, I can answer it.

11:15:59 **Q.** Was that in the package, the one with the green
11:16:02 sticky?

11:16:02 **A.** The June fifth, 1995 letter, SS, when it was
11:16:06 originally handed to me by Mr. Moody, there were documents
11:16:09 that were rubber banded together, parts of the June fifth,
11:16:12 1995 letter to attorneys Walsh and Fahey. Those documents
11:16:16 were in fact turned over to attorneys Walsh and Fahey, yes.

11:16:19 **Q.** Okay, now would you agree that almost all of the
11:16:24 documents in Exhibit SS that was supposedly turned over to
11:16:30 Fahey and Walsh, a majority of those documents do not have
11:16:35 a District Attorney stamp on them. Could you review that?

11:16:38 **A.** Well, they were turned over, and the documents that
11:16:49 are rubber banded to the Exhibit SS letter of 6/5, 1995 do
11:16:56 have the District Attorney's Office date stamp I can see on
11:17:02 some and the Oswego County Sheriff's Department date stamp.

11:17:08 **Q.** So maybe we'll go through them each one
11:17:11 particularly. Each letter that was sent in that package,
11:17:16 let's take each one one at a time. Could you take the
11:17:19 first document?

11:17:20 MR. MOODY: I'm going to object, Judge. Are
11:17:21 we going to talk about the documents that they're
11:17:23 claiming weren't turned over or are we going to talk
11:17:26 about every document that could have been --

11:17:27 THE COURT: Where are you going with this?

11:17:28 MS. BIANCO: Well, Judge, they supposedly have
11:17:30 this system where they stamp things, then they don't
11:17:33 stamp things, there's green marker, then there's not

11:17:35 green marker.

11:17:35 THE COURT: Every -- every one is DA stamped
11:17:38 or Oswego County Sheriff's Department stamped I believe
11:17:41 is the testimony unless it went to the DA's Office
11:17:43 first, and then it was DA stamped and then forwarded on
11:17:46 to the Oswego County Sheriff's Department.

11:17:48 MS. PEEBLES: So if that's the case, I do want
11:17:49 it clear, that's your understanding that if --

11:17:51 THE COURT: That's my understanding right now.
11:17:52 That's why --

11:17:53 MS. PEEBLES: Because if that's the case, then
11:17:54 fine.

11:17:56 THE COURT: She can ask the question, I have
11:17:57 no problem with that, but again, are we going to a
11:18:00 specific document that was not produced, that's what
11:18:02 I'm trying to get to.

11:18:05 MS. PEEBLES: Randi.

11:18:07 THE COURT: Actually before, Ms. Bianco, this
11:18:09 green, this other document, is that the portion that
11:18:13 you took out of SS?

11:18:15 MS. BIANCO: The green document was a portion
11:18:16 of SS. The green sticker is what Mr. Moody put on it.

11:18:20 THE COURT: Okay, I'm just trying to figure
11:18:22 out where this is from.

11:18:24 THE WITNESS: Do you want this put back

11:18:25 together, Judge?

11:18:25 THE COURT: Ms. Bianco, do you mind if he puts
11:18:27 that portion back in with SS?

11:18:29 MS. PEEBLES: Certainly.

11:18:30 THE COURT: Thank you.

11:18:32 (Whereupon, there was a pause in the
11:18:38 proceeding.)

11:18:38 MR. OAKES: Excuse me, Your Honor.

11:18:41 THE COURT: Wait. Go ahead.

11:18:43 MR. OAKES: I'm sorry, I didn't mean to
11:18:47 interrupt. For the sake of SS that's rubber banded,
11:18:48 the document's been removed at different times, put
11:18:50 back in. I don't know if the Clerk's Office has a
11:18:52 stapler, we can staple it all together now so that the
11:18:55 documents aren't going to be commingled.

11:18:58 THE COURT: How many pages?

11:19:00 MR. MOODY: It's fairly thick, probably fifty
11:19:02 or sixty pages.

11:19:03 THE COURT: I don't see a stapler going
11:19:06 through that. I don't think we're going to be able to
11:19:17 put it together as one. Go ahead, Ms. Bianco.

11:19:23 **Q.** So SS was sent to the defense on June fifth. Didn't
11:19:29 you rest your case on June fifth against Gary Thibodeau?

11:19:34 **A.** I recall, miss, that there was a verdict rendered
11:19:36 June eighteenth. I -- I don't have a clear recollection as

11:19:40 to when the People rested their case. I do not.

11:19:42 **Q.** Would something refresh your recollection like the transcript?

11:19:45 **A.** Yes.

11:19:45 **Q.** Showing you pages twenty-one eighty-four, twenty-one eighty-five and twenty-one eighty-six, could you review these to yourself please?

11:19:56 **A.** Thank you.

11:19:57 THE COURT: Is that trial transcript?

11:19:59 MS. BIANCO: Yes, Judge.

11:20:00 THE COURT: Thank you. Anybody mind if I take SS and see if we can get a staple?

11:20:35 THE WITNESS: Hand SS in its entirety to the Judge.

11:21:20 THE COURT: It's all together.

11:21:22 MR. OAKES: Thank you, Your Honor.

11:21:23 **A.** Ma'am, I have reviewed the documents that you've submitted to me. My recollection is refreshed.

11:21:27 **Q.** Would you agree that the People rested their case on June fifth?

11:21:32 **A.** I can't tell from this. I believe it would have been June five or June six. I know that the defense case started on June seventh. I believe it would have been June fifth or June sixth, 1995.

11:21:46 **Q.** So is it your testimony that you were providing the

11:22:01 document with the green sticker on SS when the People
11:22:07 rested? Is that your testimony? You were providing?

11:22:10 **A.** As part of People's ongoing duties to disclose under
11:22:14 240.60, yes, during the entirety of the trials if there was
11:22:19 any additional discoverable property or information, it in
11:22:22 fact was disclosed as part of the affirmative duties of the
11:22:25 People 240.60 ongoing duties to disclose. In fact we
11:22:28 complied with that absolutely, yes.

11:22:30 **Q.** Is that when you first sent those documents to the
11:22:34 defense?

11:22:35 MR. MOODY: Judge --

11:22:35 THE COURT: Hold on. Are you asking about the
11:22:37 portion that --

11:22:38 MS. BIANCO: The portion with the green
11:22:40 sticker on it, the confidential informant file.

11:22:43 THE COURT: Thank you.

11:22:53 **A.** From looking at SS, the answer is no, that a part of
11:23:02 SS was in fact sent, and I'm drawing from memory now
11:23:07 because I don't have the exhibit in front of me, it was May
11:23:10 seventeen, 1995, prior to the commencement of jury
11:23:15 selection as it relates to Attorney Fahey that that
11:23:18 information was disclosed. I believe it was May seventeen,
11:23:21 1995. I apologize. I don't recall the specific exhibit
11:23:25 number, but it referenced that which you are referencing in
11:23:29 your question to me about Ms. Allen.

11:23:33 **Q.** So you were disclosing it more than one time, is that your testimony?

11:23:38 **A.** It -- it would have been disclosed more than one time. The documents would speak for themselves in terms of what was made part of the May seventeen, 1995 correspondence and the June fifth, 1995, yes, they speak for themselves.

11:23:54 **Q.** I want to talk to you about the actual days that judge -- that Attorney Fahey came to your office. I believe it was your testimony that on December fourteenth Attorney Fahey came to your office the first time, is that correct?

11:24:13 **A.** Yes.

11:24:14 **Q.** And Investigator Whipple was present?

11:24:18 **A.** Yes.

11:24:19 **Q.** And it's your testimony that he spent several hours there?

11:24:24 **A.** Best recollection is that I was not in the room with Attorney Fahey during the entirety of the period of time that he was there. I was not. It was -- the entire file was made available to him on that date, that was the date that the five file boxes were turned over to Attorney Fahey. I -- I can't testify as to the amount of -- specific amount of time he spent there.

11:24:48 **Q.** Well --

11:24:48 **A.** I wasn't in the room, miss.

11:24:49 **Q.** But when you testified on direct, did you testify that he spent several hours there?

11:24:55 **A.** I don't have a recollection of that. I know that he was there for some substantial period of time. There were two days that Attorney Fahey came to the DA's Office.

11:25:05 **Q.** I want to direct your attention just to December fourteenth. When you say a substantial period of time, how long is that?

11:25:13 **A.** I don't have a clear recollection of how long Attorney Fahey was specifically in the room reviewing the entirety of the Oswego County Sheriff's Department investigation file on December fourteen, 1994. I do not have a clear recollection.

11:25:26 **Q.** Would it be -- well, let me ask you this. Are you certain it was more than an hour?

11:25:34 **A.** I do not have a clear recollection. As I testified. I was not in the room, miss. I was there for part of it and then I left.

11:25:42 **Q.** Was Attorney Fahey alone?

11:25:46 **A.** On December fourteen, 1994? I -- I cannot testify clearly as to whether or not I have a recollection if he was with someone or alone. I do not recall.

11:25:58 **Q.** You stated he went there one other time in March, is that correct?

11:26:03 **A.** At least one other time, yes.

11:26:05 **Q.** Okay, and who was present with him on that March
11:26:09 date?

11:26:09 **A.** I know Attorney Fahey was. My best recollection
11:26:14 Investigator Whipple would have been the person that I had
11:26:17 requested to meet with both counsel. I believe it was
11:26:19 Attorney Walsh. My best recollection as to Attorney Fahey
11:26:23 there was an investigator, but again I -- I don't have a
11:26:29 clear recollection of who would have accompanied Mr. Walsh
11:26:33 or Attorney Walsh and Attorney Fahey on March twenty-first,
11:26:36 1995.

11:26:37 **Q.** Those are the only two specific dates you can -- you
11:26:45 can remember of him being present at your office during
11:26:48 review of the materials?

11:26:51 **A.** I know he was there on those two dates, yes.

11:26:55 **Q.** Did you give a prior affidavit in regards to this
11:27:01 matter to the prosecution?

11:27:03 **A.** Yes.

11:27:04 **Q.** In that affidavit, did you state that I was there
11:27:08 reviewing things?

11:27:09 **A.** Ms. Bianco, I'd have to review the affidavit.

11:27:31 **Q.** Showing you what's been marked as Defendant's
11:27:34 Exhibit 147, I'd direct your attention to paragraph eleven
11:27:40 to review to yourself please.

11:27:41 **A.** Thank you.

11:27:44 MR. MOODY: One four seven?

MS. BIANCO: One four seven. Paragraph eleven. 11:27:45

11:27:45 THE COURT: Paragraph eleven or -- page eleven or paragraph eleven? 11:27:48

11:27:49 MS. BIANCO: Paragraph eleven.

11:27:50 THE COURT: Thank you.

11:27:57 **A.** I reviewed paragraph eleven.

11:28:00 **Q.** Is it your contention or was it your contention that I was there reviewing discovery as well? 11:28:03

11:28:05 **A.** That is not set forth and stated in paragraph eleven. 11:28:08

11:28:08 **Q.** What does it state in paragraph eleven?

11:28:10 **A.** Well, all of the statements were in fact made available to Attorney Fahey and/or Attorney Bianco as part of the People's CPL 240.20 response, discovery response. Copies of these statements were further provided to Attorney Fahey through the People's response to discovery. 11:28:14 11:28:17 11:28:22 11:28:24

11:28:27 **Q.** So -- so I'm clear what we're talking about, CPL 240.20 is pretrial discovery, is that right? 11:28:32

11:28:35 **A.** Yes.

11:28:36 **Q.** Okay, and you're talking about what copies were made discoverable to the attorneys pretrial, correct, in that affidavit, paragraph eleven? 11:28:40 11:28:44

11:28:46 **A.** That paragraph eleven references the paragraph

11:28:51 immediately above it which is paragraph ten where
11:28:56 specifically in that affidavit I reference that the People
11:29:01 have provided to Mr. Fahey the report of Deputy VanPatten
11:29:06 on December nine, 1994, that on December -- the report of
11:29:10 Investigator Anderson dated December nine, 1994, the report
11:29:15 of Deputy Montgomery dated December eighth, 1994.

11:29:21 **Q.** Maybe my question isn't clear. Are you saying that
11:29:27 I, Randy Bianco, was present for pretrial discovery to
11:29:31 review the boxes at your office, is that your testimony?

11:29:34 **A.** Well, if you are indicating that you're a witness to
11:29:37 this proceeding, I can't speak to that.

11:29:39 **Q.** I'm asking you if I was there.

11:29:41 **A.** I have a recollection that Attorney Fahey was there
11:29:44 and I know that Attorney Walsh was there, and Ms. Bianco, I
11:29:49 know that you were involved in the case, I don't have a
11:29:52 clear recollection of the specific dates, you were not --
11:29:55 certainly not the lead attorney as it relates to Mr. Gary
11:29:59 Thibodeau's defense.

11:30:01 **Q.** Maybe I -- maybe I'm just asking it wrong. Yes or
11:30:07 no, was I involved in the pretrial discovery process?

11:30:12 **A.** I know that you were with Attorney Fahey at
11:30:15 different stages. I can't speak to whether or not you
11:30:18 participated in the pretrial discovery process with
11:30:20 Attorney Fahey, I can't speak to that.

11:30:22 **Q.** So paragraph eleven of your affidavit when you're

11:30:26 talking about pretrial discovery, and Attorney Fahey and/or
11:30:30 Attorney Bianco, that would be incorrect, is that right?
11:30:34 **A.** No, it's not incorrect. Ms. Bianco, you were part
11:30:38 of this to refresh your recollection.
11:30:41 **Q.** I -- okay, let's talk about when I became part of
11:30:48 the case per your recollection because you have a -- seem
11:30:50 to have a really good recollection of the facts. So when
11:30:52 did I become part of the case?
11:30:54 **A.** I have no clear recollection as to specifically. I
11:30:58 saw you in court associated with different material stages
11:31:04 of the proceeding involving Gary Thibodeau, but I know that
11:31:07 you were there at different times. I do recall seeing you.
11:31:13 **Q.** But it's not your testimony that I was present
11:31:15 reviewing the discovery.
11:31:17 **A.** I don't have a recollection that while I was
11:31:20 physically present you reviewed discovery at the District
11:31:25 Attorney's Office on two particular occasions, and again, I
11:31:28 can't speak to what if anything you would have done to
11:31:30 assist Attorney Fahey regarding pretrial disclosure.
11:31:33 **Q.** But you're certain I was involved in the case
11:31:35 pretrial, correct?
11:31:38 **A.** I saw you. You appeared to be, yes.
11:31:40 **Q.** Was I sitting at the table?
11:31:43 **A.** What date, ma'am, where, when?
11:31:45 **Q.** Any dates on any proceeding before the conviction,

11:31:49 before the jury's verdict, was I sitting at that table any
11:31:52 time from the start that Judge Fahey, Joe Fahey started to
11:31:55 represent Mr. Thibodeau to the end of the jury's verdict,
11:31:59 was I at the table for any of that time?
11:32:02 **A.** I have a recollection of seeing you, Ms. Bianco,
11:32:06 yes, in court, I do.
11:32:08 **Q.** Do you have my name on any piece of paper, any piece
11:32:12 of paper from the time that Gary Thibodeau was arrested to
11:32:16 the time that the jury convicted him on any document
11:32:20 anywhere?
11:32:22 **A.** Ms. Bianco --
11:32:23 MR. MOODY: Judge, where is the relevance
11:32:25 here?
11:32:25 THE COURT: Yeah. What's the relevance?
11:32:27 MS. BIANCO: We're talking about his memories
11:32:28 of events, Judge. He's remembering what he did,
11:32:31 conversations he saw, people he saw. It affects his
11:32:35 credibility directly, Judge. I'm supposed to be there
11:32:37 involved in these proceedings. I want to know what he
11:32:40 remembers about that.
11:32:42 THE COURT: Goes to credibility.
11:32:45 **Q.** Any document at all before the jury's verdict, do
11:32:50 you have any document that you saw with my name on it?
11:33:00 THE COURT: I have some concerns procedurally.
11:33:02 Are you not now setting yourself up as a rebuttal

11:33:05 witness?

11:33:05 MS. BIANCO: No. I already testified, Judge, 11:33:07 so -- I've already gave my testimony. I want to know 11:33:09 what he has to say.

11:33:10 THE COURT: We're really close.

11:33:14 **A.** The Attorney Fahey was the attorney of record 11:33:17 associated with the defense of Gary Thibodeau. 11:33:19 Documentation would have been sent to the attorney of 11:33:21 record. That would have been Attorney Joseph Fahey.

11:33:24 **Q.** So the answer would be no, my name was not on any 11:33:26 piece of paper.

11:33:27 **A.** Subject to reviewing all of the documents, Ms. 11:33:31 Bianco, which I -- I didn't review them for the purposes of 11:33:33 testifying here in this hearing, all of the documents, but 11:33:36 I know that the documents I've seen in court as exhibits 11:33:41 reference the attorney of record would be Attorney Fahey 11:33:43 and also Attorney Walsh, Mr. Richard Thibodeau.

11:33:47 **Q.** Now could you tell us what the lead number was for 11:33:52 the confidential informant file?

11:33:55 MR. MOODY: I'm going to object, Judge. I 11:33:57 don't believe he was responsible for the 11:33:59 establishing --

11:33:59 THE COURT: You have to find out if he has any 11:34:02 knowledge before you can ask him if he knew what the 11:34:05 number is.

11:34:06 **Q.** You -- you reviewed every single piece of paper in
11:34:08 this case, is that your testimony?

11:34:09 **A.** Yes.

11:34:10 **Q.** Every single lead, correct?

11:34:12 **A.** Yes.

11:34:12 **Q.** And as a matter of fact, you detailed what leads you
11:34:15 provided to the defense in discovery, correct?

11:34:16 **A.** In part I did, yes.

11:34:18 **Q.** Well, sometimes there was a dispute over whether a
11:34:21 lead was or was not provided, is that fair?

11:34:24 **A.** That's why we're here today.

11:34:25 **Q.** Okay, could you tell me whether or not the Heidi
11:34:31 Allen confidential informant file was given a lead number?

11:34:35 **A.** I have no recollection if there was a specific lead
11:34:37 number associated with that. I do not have a recollection.

11:34:41 **Q.** Okay, did you testify earlier that all of the
11:34:46 important information was given a lead number?

11:34:49 MR. MOODY: Objection, Judge. I don't -- I
11:34:51 believe he testified he wasn't responsible for giving
11:34:53 lead numbers.

11:34:54 THE COURT: Sustained.

11:34:54 MS. BIANCO: Well, what he knew.

11:34:56 THE COURT: But that wasn't the question.

11:34:58 **Q.** Well, do you know whether all important information
11:35:00 was given a lead number?

11:35:02 **A.** I can tell you that --

11:35:04 MR. MOODY: Objection. That would be hearsay
11:35:05 and I think we're --

11:35:05 THE COURT: Sustained.

11:35:06 **Q.** You would agree that the confidential informant
11:35:12 information was important, would you agree with that?

11:35:15 **A.** Yes.

11:35:15 **Q.** And as a matter of fact, you wrote on your
11:35:18 handwritten document, I don't recall what exhibit that was,
11:35:24 your notes, the most recent one, I don't know if you have
11:35:30 it on your table or not.

11:35:31 MR. MOODY: No, it's up there.

11:35:33 THE COURT: Under your exhibit, Mr. Moody, or
11:35:35 under Ms. Bianco's?

11:35:36 MR. MOODY: Yes, it's my exhibit.

11:35:41 **Q.** Here it is. Exhibit QQ.

11:35:45 THE COURT: QQQ.

11:35:46 **Q.** You wrote on that "Brady," right?

11:35:51 **A.** Can I look, ma'am?

11:35:54 **Q.** (Handing).

11:35:55 **A.** On three pieces of paper, on the top page, my
11:35:59 handwriting, "Heidi Allen, Brady," yes, I did.

11:36:02 **Q.** Okay, and Brady information has to be disclosed to
11:36:07 the defense, you agree with that, correct?

11:36:09 **A.** Absolutely, yes.

11:36:09 **Q.** And your Brady information was put in lead sheets,
11:36:14 correct?

11:36:14 **A.** I don't know that it was, ma'am. As I testified
11:36:17 earlier, I do not know what specific lead numbers were
11:36:21 assigned by Investigator Whipple or Cromie associated with
11:36:24 information. I do not know that. The record would speak
11:36:26 for itself.

11:36:27 **Q.** Okay. Was there a miscellaneous -- so you reviewed
11:36:32 all the files in the box, correct, in the five boxes,
11:36:35 correct?

11:36:36 **A.** Yes.

11:36:37 **Q.** Was there a file labeled miscellaneous?

11:36:42 MR. MOODY: I'm going to object. What's the
11:36:43 relevance of whether the file was labeled
11:36:45 miscellaneous?

11:36:46 THE COURT: Yeah. Why is it relevant what it
11:36:49 was labeled?

11:36:49 MS. BIANCO: Well, Judge, they're trying to
11:36:50 talk about this procedure that they had, these green
11:36:55 marks, these leads numbers, how organized, how
11:36:56 specific.

11:36:56 THE COURT: Why don't you speak to the word
11:36:58 miscellaneous.

11:36:59 MS. BIANCO: What was it labeled under. Maybe
11:37:01 that's the question.

11:37:02 THE COURT: What does it matter what it's
11:37:03 labeled under?
11:37:04 MS. BIANCO: How do they know what they're
11:37:06 disclosing if they don't have it labeled as anything.
11:37:08 They don't have it labeled as a lead.
11:37:10 THE COURT: Ask him if he knows what it's
11:37:11 labeled. I'm not sure I follow your logic, Ms. Bianco,
11:37:15 but I'll allow the question.
11:37:16 **Q.** What was it labeled as?
11:37:17 **A.** I'm referencing specifically the documents that
11:37:19 you're holding in your hands, whatever the exhibit numbers
11:37:22 are?
11:37:23 **Q.** QQQ.
11:37:24 **A.** Thank you. That would have been part of the Oswego
11:37:29 County Sheriff's Department investigation reports. I don't
11:37:31 know that there is a label, but it would have been part,
11:37:33 Ms. Bianco, of the Oswego County Sheriff's Department
11:37:36 investigation report.
11:37:38 **Q.** Now obviously Exhibit QQQ was something that you
11:37:45 made this your own handwritten version of, correct?
11:37:48 **A.** That was my work copy, it was, yes.
11:37:49 **Q.** And you underlined things in different colors,
11:37:52 correct?
11:37:52 **A.** That's correct, yes.
11:37:53 **Q.** Because you thought it was that significant,

11:37:55 correct?
11:37:55 **A.** It was to refresh my memory, point out certain
11:37:59 important aspects, absolutely, yes.
11:38:01 **Q.** And on that document you wrote T-O-T, correct?
11:38:04 **A.** Turn over to.
11:38:05 **Q.** Right. Now on all of these significant Brady
11:38:10 documents did you write T-O-T?
11:38:14 MR. MOODY: Objection. Is she talking about
11:38:16 all the documents, Brady documents in the file or on
11:38:19 that particular exhibit?
11:38:19 THE COURT: Can you -- that exhibit?
11:38:20 **Q.** Not this, the Brady material in general. Did you
11:38:23 write T-O-T on that?
11:38:24 **A.** Absolutely not. The original Sheriff's Department
11:38:28 investigation report as I testified earlier contained a
11:38:32 number of different items. If within the Oswego County
11:38:36 Sheriff's Department investigation reports or reports of
11:38:39 other police agencies or statements from potential
11:38:42 witnesses, or notes, if there was something in there that
11:38:46 arguably fell within the definition of Brady material, I
11:38:50 never wrote on the original report, I would make a work
11:38:56 copy reproduction if I did, and then I would write "Brady"
11:38:59 on it, but I can't say that I did that on every one. I
11:39:03 knew that we were disclosing the entirety of the file, all
11:39:07 of it, which included all Brady material.

11:39:10 **Q.** Now, showing you what's been marked Defendant's Exhibit 11-A, like you to take a look at that for yourself please.

11:39:30 (Whereupon, there was a pause in the proceeding.)

11:39:35 **A.** Yes, I've reviewed it.

11:39:37 **Q.** Did you have a work copy of that document where you had T-O-T on a work copy?

11:39:45 **A.** A work copy of --

11:39:47 **Q.** That document.

11:39:49 **A.** Exhibit 11-A?

11:39:50 **Q.** 11-A, yes.

11:39:51 **A.** 11-A is the work copy. It appears to be a reproduction of the work copy. By that I mean the file copy of the Oswego County District Attorney's Office dated May seventeen, 1995 stating to both Fahey and Walsh, "Attached is additional CPL 240.60 material," and it is stapled to it, yes, this, I --

11:40:16 **Q.** My question to you is just like your work copy on QQQ where you have things highlighted and you wrote red T-O-T, do you have something similar to that for that document, 11-A?

11:40:26 **A.** On exhibit --

11:40:27 MR. MOODY: I'm going to object. What's the relevance of that?

11:40:31 THE COURT: Sustained. He already said he didn't put it on all work copies.

11:40:34 **Q.** So it's your contention that the document regarding Heidi Allen as a confidential informant in nineteen -- what year did she become an informant on that document, do you know?

11:40:45 MR. MOODY: On which document are we talking about?

11:40:48 MS. BIANCO: 11-A.

11:40:49 THE COURT: Do you know?

11:40:50 THE WITNESS: I have a direct recollection that Heidi Allen provided confidential information in 1991 to I believe it was Investigator And -- Investigator VanPatten. She never worked as a confidential informant. She provided confidential information I believe on one occasion to Anderson and -- on one occasion I believe in 1991 to Investigator Anderson. She never worked as a confidential informant.

11:41:16 **Q.** Okay, but that -- that -- those documents were created in 1991, correct, the card?

11:41:24 MR. MOODY: Are we talking about 11-A again?

11:41:27 MS. BIANCO: 11-A.

11:41:27 THE COURT: The entirety of 11-A?

11:41:28 MS. BIANCO: The card, the card for her as a

11:41:31 confidential informant.

11:41:32 **A.** I believe you're referencing page three of Exhibit
11:41:35 11-A which appears to be a photocopy of a picture of Heidi
11:41:39 Allen, certain information that's typed, yes, that
11:41:45 specifically does include and was disclosed in addition to
11:41:49 the other information, this information, page three.

11:41:52 **Q.** Okay, is it -- when was that particular information
11:41:58 in 11-A, the card with the note attached to the card in
11:42:02 11-A, when was that particular information first disclosed
11:42:06 to the defense?

11:42:11 **A.** Well, if 11-A is the District Attorney's Office file
11:42:15 copy, it's dated May seventeen, 1995, and at page three,
11:42:26 and then there's some additional pages thereafter, that
11:42:30 portion was disclosed on May seventeen, 1995.

11:42:34 **Q.** So you're not stating that that -- the actual card
11:42:38 with her picture on it, her pedigree information or the
11:42:42 notes that are attached were given to the defense before
11:42:47 May sixteenth, you're not saying that, correct?

11:42:49 **A.** As it relates to this particular document, I know
11:42:52 that they were disclosed on May seventeen, 1995. Out of
11:42:56 completeness and fairness I would have to see if this
11:43:00 information was previously disclosed at some prior time. I
11:43:07 know that there are -- it appears that at pages four to the
11:43:12 end there are handwritten notes of individuals.

(Whereupon, there was a pause in the

11:44:20 proceeding).

11:44:20 MS. BIANCO: He hasn't answered the question
11:44:22 yet.

11:44:22 THE COURT: There's no question asked.

11:44:25 THE WITNESS: Is a question before me?

11:44:26 **Q.** The question was was that in the file, was that in
11:44:30 your or the Sheriff's Department original file before that
11:44:35 date, before May sixteen, 1995, was it in the file?

11:44:40 THE COURT: What portion of 11-A are you
11:44:43 talking about?

11:44:43 MS. BIANCO: The confidential informant card.

11:44:46 THE COURT: That's not the question you
11:44:47 presented to him. The question you presented, he
11:44:48 answered the question, he said in all fairness I'd have
11:44:51 to look in the file to see if we had disclosed it a
11:44:54 previous time, kind of indicating that maybe a double
11:44:57 disclosure. That's the difference. Just ask a
11:44:59 different question. You can ask the question, I don't
11:45:01 care, but --

11:45:03 **Q.** Do you know with one-hundred percent certainty
11:45:07 whether the confidential informant card with her -- Heidi
11:45:12 Allen's picture, her pedigree information and the notes
11:45:17 attached to that card, do you know with certainty whether
11:45:21 or not that was in the file, the Sheriff's Department's
11:45:25 original file that was at the DA's Office at the time Judge

11:45:29 Fahey came to look at those documents, do you know whether
11:45:32 that was there?

11:45:34 **A.** This particular document I do not.

11:45:36 **Q.** Okay. Now I want to direct the same question to
11:45:40 when Judge Fahey came over in March, okay, March of 1995.
11:45:46 Was that document in that file, can you say with certainty,
11:45:51 at the time he came to review the documents?

11:45:53 **A.** I can say it's my belief that it was but with -- I
11:46:00 can say it's my belief that it was, yes.

11:46:02 **Q.** Okay. Now, part of the information on the
11:46:08 confidential informant card are two thumb prints, is that
11:46:11 correct?

11:46:11 **A.** Appears to be, yes.

11:46:12 **Q.** And that would be Heidi Allen's thumb prints,
11:46:15 correct?

11:46:16 **A.** Appears to be, yes.

11:46:17 **Q.** And that would have been taken by some member of the
11:46:20 Sheriff's Department, correct?

11:46:21 **A.** December eleven, 1991.

11:46:23 **Q.** Okay.

11:46:30 MS. BIANCO: May I have a moment, Your Honor?

11:46:32 THE COURT: Sure.

11:46:32 (Whereupon, there was a pause in the
11:46:44 proceeding.)

11:46:44 **Q.** During the course of the trial, the course of the

11:46:47 trial for Gary Thibodeau, did you elicit any information
11:46:55 that Heidi Allen was working as a confidential informant or
11:46:58 had previously been tried as a confidential informant? Did
11:47:02 you elicit anything?

11:47:04 MR. MOODY: Objection. Being tried?

11:47:05 THE COURT: I want to make sure you don't mean
11:47:07 went to trial.

11:47:08 MS. BIANCO: Not to trial, no, that she tried
11:47:10 or attempted to give information to the Sheriff's
11:47:12 Department.

11:47:12 THE COURT: And the question is did he --

11:47:13 MS. BIANCO: Did he elicit anything in the
11:47:15 record during the trial.

11:47:18 MR. MOODY: I'm going to object to relevance,
11:47:20 Judge.

11:47:20 THE COURT: Yeah. What's the relevance
11:47:23 whether he raised it or not?

11:47:24 MR. MOODY: And the transcript would speak for
11:47:27 itself.

11:47:27 THE COURT: Sustained.

11:47:28 **Q.** Okay, I have a better question. In questioning the
11:47:30 police witnesses, didn't you lead the jury to believe that
11:47:33 the only prints you had from Heidi Allen were thumb prints
11:47:36 which were taken from a notebook in her vehicle? I'd refer
11:47:41 to transcript page two-thousand seventy-six if you need to

11:47:46 look at it.

11:47:47 MR. MOODY: Objection, Judge. Again, the
11:47:48 transcript would speak for itself and the -- if that
11:47:51 was the testimony from a witness, I don't believe he
11:47:53 would need them to believe it.

11:47:55 THE COURT: I'm not sure why it's relevant to
11:47:56 be honest with you.

11:47:57 MS. BIANCO: Well, Judge, if -- if this card
11:47:59 was disclosed, then why in the world is it being
11:48:01 elicited by this witness, through other witnesses, that
11:48:04 they got the fingerprints off of a notebook and not
11:48:08 that they had them professionally taken by an officer.
11:48:10 Why would you use fingerprints that were taken from a
11:48:14 notebook as opposed to fingerprints that you actually
11:48:16 had. This was an issue during the course of the trial
11:48:19 and it was never mentioned that they had these
11:48:22 fingerprints. That is significant.

11:48:25 THE COURT: I disagree. If he disclosed it,
11:48:26 it's not significant at all. Sustained.

11:48:28 MS. BIANCO: It's not significant that they --
11:48:30 they did not bring out --

11:48:31 THE COURT: Ms. Bianco, I'm not going to argue
11:48:33 with you. I sustained the objection.

11:48:34 MS. BIANCO: Well, Judge, am I precluded from
11:48:38 this line of questioning in its entirety?

11:48:40 THE COURT: Well, regarding the thumb -- the
11:48:41 thumbprints?
11:48:41 MS. BIANCO: Thumbprints, yes.
11:48:42 THE COURT: Yes. It's not relevant.
11:48:45 MS. BIANCO: Pardon, Judge?
11:48:46 THE COURT: I don't find that it's relevant.
11:48:48 MS. BIANCO: So I cannot further go along.
11:48:50 THE COURT: Correct, correct.
11:48:52 MS. PEEBLES: Excuse me, if I might add just
11:48:54 to clear this up.
11:48:55 THE COURT: Sure.
11:48:55 MS. PEEBLES: On the record there was a
11:48:56 question about whether or not the Oswego County
11:48:58 Sheriff's Department had any fingerprints of Heidi
11:49:02 Allen and that was the testimony elicited and the
11:49:04 question asked by Mr. Dodd and the answer was not that
11:49:08 they were aware of, and then there was a question about
11:49:10 where did you get the fingerprints from and they said
11:49:12 the notebook. I think it is a fair line of questioning
11:49:15 and I think that Ms. Bianco should be able to explore
11:49:18 that with Mr. Dodd.
11:49:19 THE COURT: How's it tie back to discovery
11:49:22 issues?
11:49:22 MS. BIANCO: Because they're trying to say
11:49:24 that they gave this card to Judge Fahey and the card

11:49:26 would have the two fingerprints in it. Obviously he
11:49:28 wouldn't need to ask about where the thumbprints are
11:49:31 coming if he knew where the thumbprints were.

11:49:33 THE COURT: I'm going to continue to sustain
11:49:35 my -- sustain the objection. I think it's far reaching
11:49:39 and it's just grasping.

11:49:42 MS. PEEBLES: Grasping?

11:49:44 THE COURT: Yes. That's the word I used.

11:49:48 **Q.** I'd like to show you Defense Exhibit No. 144.

11:50:24 THE COURT: It's ten of twelve. Why don't we
11:50:27 stop. As opposed to stopping Ms. Bianco asking
11:50:29 questions about Exhibit 144, why don't we stop now,
11:50:32 allow her to come back after the lunch recess to start
11:50:35 on 144. How does that sound?

11:50:37 MS. BIANCO: That's fine, Judge.

11:50:38 THE COURT: Why don't we come back at one
11:50:40 o'clock. It's ten of twelve right now. Ms. Bianco,
11:50:43 there is 11-A.

11:50:48 MS. BIANCO: Thank you.

11:50:50 (Whereupon, there was a recess.).

12:56:40 THE COURT: Why don't we call Mr. Dodd back.

(Whereupon, there was a pause in the
12:57:07 proceeding).

12:57:07 THE COURT: Mr. Dodd, you're still under oath,
12:57:08 sir.

12:57:08 THE WITNESS: Yes, sir.

12:57:18 THE COURT: Whenever you're ready, Ms. Bianco.

12:57:21 MS. BIANCO: Thank you, Judge.

12:57:23 BY MS. BIANCO:

12:57:24 **Q.** Mr. Dodd, I want to direct your attention to the
12:57:28 witness Kristine Duell. Do you remember her?

12:57:30 **A.** Yes.

12:57:31 **Q.** She was the owner of the D & W, correct?

12:57:34 **A.** I believe she was a co-owner, but yes.

12:57:37 **Q.** And Heidi Allen worked at the D & W, correct?

12:57:39 **A.** Absolutely, yes.

12:57:41 **Q.** And you called her as a witness in your case against
12:57:45 Gary Thibodeau, correct?

12:57:46 **A.** Best recollection is yes.

12:57:48 **Q.** And she knew Heidi Allen personally as well as
12:57:52 professionally, is that right?

12:57:53 **A.** Yes.

12:57:54 **Q.** Heidi had worked at the D & W Convenience Store for
12:57:59 a couple of years, correct?

12:58:00 **A.** I believe it was a couple of years, yes.

12:58:03 **Q.** According to Kristine Duell's testimony, Heidi Allen
12:58:08 was scheduled to work that Easter morning, correct?

12:58:10 MR. MOODY: I'm going to object, Judge. What
12:58:12 does her schedule have to do with any of the issues
12:58:14 we're facing here today?

12:58:15 MS. BIANCO: Well, I'm going into the whole
12:58:17 one-forty-four informant card. I'm establishing a
12:58:21 foundation.

12:58:22 THE COURT: I'll allow it if that's where
12:58:23 you're going with it.

12:58:24 MS. BIANCO: Yes.

12:58:26 **Q.** She was scheduled to work that Easter morning,
12:58:29 correct?

12:58:29 **A.** I believe there was a written schedule that
12:58:32 indicated no, Heidi Allen was not scheduled. I'm clear on
12:58:35 this. Heidi Allen was not scheduled to work on Easter
12:58:39 Sunday morning. She was kind enough and gracious enough to
12:58:43 cover for some other woman, young girl I would call her, so
12:58:47 she could enjoy Easter Sunday.

12:58:49 MR. MOODY: I'm going to object. Doesn't the
12:58:51 transcript speak for itself? I believe Ms. Duell
12:58:53 testified on this matter at the time of the trial.

12:58:55 THE COURT: If it's just going to be
12:58:56 foundation, that's fine, that's all you're going to use
12:58:58 it for.

12:58:59 MS. BIANCO: That's fine.

12:58:59 THE COURT: I'll allow it.

12:59:00 **Q.** I wanted to talk to you about the confidential
12:59:03 informant materials that were dropped in the parking lot of
12:59:06 the D & W Convenience Store. Are you familiar with the

12:59:10 fact that Kristine Duell found those documents, is that
12:59:13 right?

12:59:13 **A.** I would have been made aware of that at some point,
12:59:17 yes.

12:59:17 **Q.** Are you aware of the fact that she's the one who --
12:59:27 who called it in that these documents were found on the
12:59:30 floor?

12:59:30 **A.** I don't have a clear recollection of that, no.

12:59:32 **Q.** Okay, were you familiar with the punch card system
12:59:36 by the Oswego County Sheriff's Department in 1991 and 1992?

12:59:42 **A.** Yes.

12:59:43 **Q.** Showing you what's been marked Exhibit 44, 144,
12:59:52 excuse me, Defense Exhibit 144, do you recognize that
12:59:56 exhibit?

01:00:13 THE COURT: Do you ask him if he recognizes it
01:00:16 as a punch card or a specific punch card?

01:00:19 MS. BIANCO: That specific punch card, 144.

01:00:24 **A.** Do I recall this specific punch card? I don't have
01:00:27 a clear recollection of it.

01:00:30 **Q.** Well, would it be fair to say that that punch
01:00:35 card -- do you know whether or not that punch card had
01:00:38 anything to do with the materials that were dropped at the
01:00:43 D & W regarding her confidential informant status?

01:00:46 **A.** It appears to be a punch card entered specific to a
01:00:49 date indicating a Kris Duell had found some property and --

01:01:02 and that Ms. Duell is reporting that it possibly belonged
01:01:05 to Oswego County, that it was possibly Oswego County
01:01:09 Sheriff's Department property, yes.

01:01:10 **Q.** Do you remember that punch card in particular?

01:01:14 **A.** I can't say that I do, no.

01:01:17 **Q.** Okay, do you know whether or not that particular
01:01:21 punch card, Exhibit 144, was turned over to Attorney Joe
01:01:27 Fahey?

01:01:29 **A.** If this was part of the Oswego County Sheriff's
01:01:32 Department investigation report, those documents would have
01:01:36 been disclosed and made available to attorneys Fahey and
01:01:39 Walsh.

01:01:39 **Q.** If that document was not provided in a lead, it was
01:01:44 not a lead sheet, connected to a lead sheet, excuse me, do
01:01:51 you know whether or not that document would have been
01:01:52 provided to attorneys Fahey or Walsh?

01:01:56 MR. MOODY: Objection, Judge. I think he's
01:01:57 answered the question that was in the file, it would
01:02:00 have been provided.

01:02:01 THE COURT: I'll sustain.

01:02:02 **Q.** If Investigator Whipple said that that document
01:02:05 wasn't in the file, would you have any reason to question
01:02:07 him?

01:02:07 MR. MOODY: I'm going to object, Judge. We're
01:02:09 having one witness impeach another.

01:02:12 THE COURT: Sustained.

01:02:12 **Q.** You don't know one way or another whether that
01:02:15 specific card was turned over, you're just assuming if it
01:02:18 was in the file it was turned over, correct?

01:02:20 **A.** I know that the documents that were in the file were
01:02:23 in fact turned over. I know that to be true.

01:02:25 **Q.** Do you know whether that document was in the file?

01:02:28 **A.** I can't testify that I know of my own direct
01:02:32 knowledge, no.

01:02:33 **Q.** Thank you. Now do you remember giving testimony on
01:03:03 direct examination that you had multiple conversations,
01:03:07 telephone conversations, with both attorneys Fahey and
01:03:10 Walsh regarding discovery issues, correct?

01:03:14 **A.** I recall stating that under oath and --

01:03:17 **Q.** Yes.

01:03:17 **A.** Yes.

01:03:18 **Q.** Was it -- is it your position that this was not a
01:03:22 contentious battle for the discovery, is that your
01:03:25 position?

01:03:25 MR. MOODY: I'm going to object, Judge, to
01:03:26 "contentious."

01:03:27 THE COURT: I'll sustain.

01:03:28 **Q.** Well, do you remember having an issue with Attorney
01:03:49 Fahey about refusing to provide him with Gary Thibodeau's,
01:03:55 excuse me, refusing to provide Joseph Fahey with the Grand

01:04:00 Jury testimony which was presented in Richard Thibodeau's
01:04:04 indictment at Gary Thibodeau's preliminary hearing, do you
01:04:08 remember refusing to give that to him?

01:04:10 MR. MOODY: Judge, I'm going to object. I
01:04:11 don't see how the preliminary hearing is relevant to
01:04:14 any of those discussions.

01:04:15 MS. BIANCO: He's giving everything and always
01:04:17 giving stuff. There is a battle here for every piece
01:04:20 of paper.

01:04:21 THE COURT: Neither Mr. Fahey or Mr. Walsh
01:04:24 testified to that. I'll allow the question.

01:04:27 **A.** Could -- I'm sorry, could you say it again please?
01:04:29 I --

01:04:30 **Q.** Absolutely, okay. When Gary Thibodeau had his
01:04:35 preliminary hearing, you were the prosecutor that
01:04:37 presented, correct?

01:04:37 **A.** True.

01:04:38 **Q.** Okay, and Joseph Fahey had asked you for the Grand
01:04:44 Jury testimony from the witnesses at Richard Thibodeau's
01:04:49 indictment that were going to be testifying at the
01:04:51 preliminary hearing, correct?

01:04:54 **A.** I'm -- I would have to look at the specific
01:04:57 discovery demand of Attorney Fahey, but I -- my best
01:05:00 recollection is that Attorney Fahey requested as part of
01:05:04 discovery any prior recorded testimony of any potential

01:05:08 People's witness at where the subject matter of their prior
01:05:13 testimony would relate to their on trial testimony which
01:05:15 would have included prior Grand Jury testimony of
01:05:17 witnesses, yes.

01:05:18 **Q.** But was it your position that the defense wasn't
01:05:20 entitled to that testimony?

01:05:22 **A.** Grand Jury testimony of a witness?

01:05:25 **Q.** Of a witness that testified at Richard
01:05:30 Thibodeau's -- in front of the Grand Jury for Richard
01:05:32 Thibodeau. Mr. Fahey was asking specifically for that
01:05:36 witness's testimony during the preliminary hearing because
01:05:39 it related to the same subject. Did you refuse to give
01:05:42 that to him?

01:05:42 **A.** There was no Grand Jury testimony prior to the
01:05:46 preliminary hearing.

01:05:48 **Q.** 'Cause you didn't have it typed up, is that why?

01:05:51 **A.** Negative. There was no Grand Jury presentation of
01:05:54 evidence prior to the preliminary hearing.

01:05:56 **Q.** So Richard Thibodeau was not indicted prior to Gary
01:06:01 Thibodeau's preliminary hearing?

01:06:03 **A.** Okay, you -- you use different defendants. I would
01:06:06 have to review the documents to see the effective dates of
01:06:09 certain things.

01:06:24 **Q.** Do you remember when Joseph Fahey filed motions
01:06:29 seeking sanctions against you for discovery violations, do

01:06:32 you remember that?

01:06:33 **A.** No.

01:06:37 **Q.** Would anything refresh your recollection?

01:06:39 **A.** Obviously what you have in your hand.

01:07:16 **Q.** I'm going to show you Defendant's Exhibit 3 which is
01:07:20 defense counsel's motion dated December fifth, 1994 and I'm
01:07:24 going to ask you to read pages six through the top of page
01:07:29 nine to yourself please.

01:07:33 THE COURT: Is this a motion by Mr. Fahey?

01:07:35 MS. BIANCO: Yes.

01:07:36 THE COURT: Thank you.

01:07:38 (Whereupon, there was a pause in the
01:08:28 proceeding.)

01:08:28 THE COURT: Ms. Bianco, what page did you
01:08:31 reference?

01:08:31 MS. BIANCO: I'm referencing pages six through
01:08:32 the top of nine.

01:08:33 THE COURT: Thank you.

01:08:34 **A.** Through nine?

01:08:35 **Q.** Yes, just the top of nine.

01:08:38 **A.** I have reviewed them, yes.

01:10:11 **Q.** Didn't you take the position that the defense was
01:10:14 not entitled to the Grand Jury testimony of those
01:10:17 witnesses, and I would direct your attention to paragraph
01:10:21 ten. Did you take that position?

01:10:23 **A.** In reviewing Exhibit 3 which is a motion that did
01:10:26 not include a motion for sanctions, it did include various
01:10:31 motions filed by Attorney Fahey on behalf of Gary
01:10:33 Thibodeau, amongst them would be for court ordered
01:10:37 discovery of all discoverable property and specifically --

01:10:44 **Q.** Well, did -- I'm sorry, go ahead.

01:10:47 **A.** Bear with me in referring to the page that you're
01:11:01 referencing me to look at, page ten.

01:11:04 **Q.** Yes. Wasn't it your position that the defense
01:11:07 wasn't entitled to the Grand Jury testimony of those
01:11:10 witnesses, was that your position at that time?

01:11:14 MR. MOODY: I'm going to object. Can we have
01:11:14 a time frame when they weren't entitled, and I'm still
01:11:17 curious as to how this is relevant to the discussion
01:11:19 we're having here today.

01:11:20 THE COURT: It goes to -- she's going towards
01:11:22 credibility.

01:11:24 **A.** The page you reference doesn't include that, Ms.
01:11:26 Bianco, does not.

01:11:28 **Q.** Is it the page -- later in the page where it says
01:11:31 that you -- did you take the position that the defense
01:11:36 wasn't entitled to the Grand Jury minutes of the witnesses
01:11:40 at that time, not that it wasn't available, but that they
01:11:42 weren't entitled to it. Did you take that position?

01:11:45 MR. MOODY: I'm going to object. What time?

01:11:48 THE COURT: She's talking about, correct me if
01:11:51 I'm wrong, you're talking about the Richard Thibodeau
01:11:53 Grand Jury minutes to be used in the Gary Thibodeau
01:11:55 preliminary hearing.

01:11:56 MS. BIANCO: Exactly, Judge, yes. Did you
01:11:58 take that position?

01:11:59 **A.** My recollection -- I don't have clear recollection
01:12:09 of the issues that arose during the course of the
01:12:12 preliminary hearing as to Gary Thibodeau.

01:12:15 **Q.** Okay.

01:12:16 **A.** As it relates to the demands that were made by
01:12:19 Attorney Fahey associated with the conducting of the
01:12:23 preliminary hearing, I don't have a clear recollection as I
01:12:26 testified.

01:12:26 **Q.** Do you remember him bringing a habeas corpus
01:12:29 petition saying that he was entitled to that and you
01:12:33 arguing against it, do you remember that?

01:12:35 **A.** Ms. Bianco, I'd have to review the documents and I
01:12:39 don't --

01:12:39 **Q.** Well, do you remember during the course of this
01:12:43 motion argument, in the motion itself, Attorney Fahey
01:12:49 stated that you demonstrated that you lack the most basic
01:12:56 understanding --

01:12:57 MR. MOODY: I'm going to object.

01:12:58 **Q.** -- of the requirements and obligations of the

01:13:01 Criminal Procedure Law?

01:13:01 THE COURT: What's the objection?

01:13:02 MR. MOODY: Judge, is there a question here
01:13:03 first off and what is Judge Fahey's opinion of --

01:13:06 THE COURT: More of a testimonial question.

01:13:08 MS. BIANCO: Well, Judge, may I ask the
01:13:10 question?

01:13:11 THE COURT: You can ask the question but why
01:13:12 are you reading from a document?

MS. BIANCO: Well, I'm --

01:13:14 THE COURT: Sounds like you're testifying.

01:13:15 **Q.** You were being accused of not providing discovery
01:13:19 during the initial phases of this proceeding, right?

01:13:23 **A.** In the documents that you've just provided to me
01:13:26 which is the motion, if you'd reviewed what it is that was
01:13:29 the relief that was being sought, first there was no
01:13:31 request that I see here for sanctions. There was, however,
01:13:35 a demand that apparently was filed in Oswego County Court
01:13:38 for the purposes of -- of various types of relief, amongst
01:13:44 them would be court ordered discovery, so the motion was
01:13:47 for court ordered discovery.

01:13:49 **Q.** Is it fair to say that Judge Fahey was making this
01:13:54 motion because you were refusing to give him discovery?

01:13:58 **A.** Discovery associated with the indictment of Gary
01:14:01 Thibodeau was provided to Attorney Fahey.

01:14:04 **Q.** May I see that document for just a moment?

01:14:06 **A.** Yes. Exhibit 8?

01:14:09 **Q.** Yes.

01:14:09 **A.** Three, sorry (handing).

01:14:37 MS. BIANCO: May Ms. Peebles come over for
01:14:41 just one second?

01:14:42 THE COURT: Yes.

01:15:14 MS. BIANCO: If we may have a moment, judge.

01:15:15 THE COURT: Sure. Do you need a quick recess
01:15:18 or --

01:15:20 MS. BIANCO: I don't think we need a quick
01:15:21 recess, I think it will be -- well, maybe a five-minute
01:15:27 break, Judge, because then I can for sure find it,
01:15:30 thank you.

01:15:30 THE COURT: At the request of the defense
01:15:32 we'll take a five-minute recess. Mr. Dodd, you can
01:15:36 step down or stay here, it's up to you.

01:15:38 (Whereupon, there was a recess.)

01:21:11 THE COURT: Okay, Ms. Bianco.

01:21:13 **Q.** Mr. Dodd, I apologize, I showed you the wrong
01:21:17 paragraph about your position on the disclosure of the
01:21:20 Grand Jury minutes. I'd like to show you page -- of
01:21:26 Exhibit 3, page six, paragraph seven, and ask you to review
01:21:35 that to yourself please.

01:21:40 **A.** Thank you.

01:21:40 (Whereupon, there was a pause in the
01:21:51 proceeding.)

01:21:51 **A.** I've reviewed it.

01:21:52 **Q.** Did you in fact take the position and advise the
01:21:55 town court justice that it was not the District Attorney's
01:21:58 obligation to provide Grand Jury material at that time?

01:22:03 **A.** I have no recollection of that.

01:22:07 **Q.** That doesn't refresh your recollection?

01:22:08 **A.** No. It's an assertion by Mr. Fahey. I have no
01:22:11 direct recollection of it, no, I do not.

01:22:13 **Q.** Okay, well, would you agree that in paragraph twelve
01:22:22 of that affidavit that Judge Fahey is -- excuse me,
01:22:28 Attorney Fahey is claiming that you don't understand basic
01:22:33 requirements of Criminal Procedure Law. That was the
01:22:35 accusation against you.

01:22:36 MR. MOODY: I'm going to object to the
01:22:38 accusation and to -- we're here to determine whether
01:22:41 the documents were turned over or not.

01:22:42 MS. BIANCO: This is what I'm going on right
01:22:44 after the next question, Judge. I just want to know if
01:22:46 he read that paragraph.

01:22:48 THE COURT: Did you read the paragraph?

01:22:49 THE WITNESS: Which paragraph?

01:22:51 THE COURT: Twelve.

01:22:52 **Q.** Paragraph twelve.

01:23:08 **A.** I've read paragraph twelve.

01:23:10 **Q.** After that accusation, weren't you particularly careful about writing down what you were going to -- what you were disclosing to the defense?

01:23:18 **A.** I was particularly careful at all stages of this proceeding to insure that we had a systematic, organized, verifiable way to demonstrate in the event this day came, Ms. Bianco, that I could point back in time to twenty years ago to be able to identify with a measure of reliability to this judge the procedure that was in place for the purposes of demonstrating that the documents in fact were photocopied, reproduced in their entirety and turned over to attorneys Fahey and Walsh.

01:23:54 **Q.** But we talked a little bit about your letter which was Exhibit 21, that five-page letter detailing what you turned over to the defense. Do you remember that letter?

01:24:05 **A.** I don't remember the specific date but I remember the letter, yes.

01:24:09 **Q.** Okay, and the reason you were trying to be so detailed in the letter was so that you had an organized, systematic means and method by which you would be able to show what was disclosed, is that correct?

01:24:23 **A.** No.

01:24:23 MR. MOODY: I'm going to object, Judge. Are we going to get to the again, for the third time --

01:24:26 THE COURT: I'm going to sustain the
01:24:28 objection.

01:24:29 **Q.** Well, do you remember receiving motions from Judge
01:24:39 Walsh where he was alleging that he didn't receive
01:24:43 discovery from you, do you remember that?

01:24:46 **A.** When? What date, Ms. Bianco? I have no
01:24:50 recollection -- I know that there were motions that were
01:24:53 submitted by both counsel, but I cannot testify reliably
01:24:56 here today as to the specific substance unless I review it.

01:24:59 THE COURT: Are these Omnibus Motions or
01:25:02 separate and distinct motions beyond the Omnibus
01:25:05 Motions?

01:25:06 MS. BIANCO: Judge, I believe he testified --

01:25:06 THE COURT: I'm just asking you are you making
01:25:08 reference to an Omnibus Motion or a normal --

01:25:11 MS. BIANCO: I'm making reference to an
01:25:13 Omnibus Motion made at the same time while they were
01:25:15 still joined, and it's Mr. Dodd's position that he gave
01:25:18 the exact identical discovery to both attorneys so I
01:25:21 think this would be relevant.

01:25:27 **Q.** Do you remember discovery motion filed by Judge
01:25:29 Walsh on January thirteenth, 1995?

01:25:31 **A.** No.

01:25:32 **Q.** Okay, would anything refresh your recollection?

01:25:34 **A.** Yes.

01:25:35 **Q.** Showing you what's been marked Defendant's Exhibit
01:25:39 142, I'd like you to review this to yourself please.

01:25:49 THE COURT: Whole Omnibus Motion?

01:25:51 MS. BIANCO: Well, I can direct him to
01:25:53 specific parts.

01:25:54 THE COURT: That would probably be faster.

01:25:56 **Q.** I'd like you to take a look at paragraph J, pages
01:26:01 eight and nine.

01:26:24 (Whereupon, there was a pause in the
01:26:35 proceeding.)

01:26:35 **A.** I reviewed the pages you asked me to review, pages
01:26:39 eight and nine.

01:26:40 **Q.** Okay, well, is it true that Attorney Walsh was
01:26:44 stating that you failed to give him a hundred and forty
01:26:49 leads you stated you had provided?

01:27:08 MR. MOODY: Judge, I guess I'm --

01:27:09 **A.** No, it does not state that, Ms. Bianco.

01:27:11 MR. MOODY: Judge, I'm going to object to --
01:27:13 are we here to determine whether or not Judge Walsh got
01:27:16 things now? I'm a little far afield as to whether --

01:27:20 THE COURT: This is Walsh's Omnibus Motion?

01:27:21 MS. BIANCO: It was Walsh's Omnibus Motion.
01:27:23 They were joined at the same time and it's -- it's Mr.
01:27:25 Dodd's contention that he gave -- everything that he
01:27:27 gave to Fahey he gave to Walsh.

01:27:29 THE COURT: What is the date of the Omnibus
01:27:31 Motion?

01:27:31 MS. BIANCO: The date of the Omnibus Motion is
01:27:34 January thirteenth.

01:27:35 THE COURT: Ninety-five?

01:27:36 MS. BIANCO: Ninety-five, yes.

01:27:41 THE COURT: What does that paragraph say I
01:27:43 guess?

01:27:43 THE WITNESS: It doesn't say what she asked
01:27:45 me.

01:27:45 THE COURT: Okay.

01:28:16 **Q.** I apologize, Mr. Dodd. Page eleven. I'm going to
01:28:20 show you that page.

01:28:22 THE COURT: What paragraph?

01:28:23 MS. BIANCO: And it's paragraph J. I just had
01:28:25 the wrong page. Paragraph J.

01:28:32 THE WITNESS: Thank you.

01:28:33 **Q.** Right there.

01:28:35 **A.** I've read page eleven, paragraph J.

01:28:57 **Q.** Doesn't he accuse you of failing to provide him with
01:29:02 one-hundred and forty separate leads that you contended you
01:29:05 gave him?

01:29:07 **A.** Paragraph or page eleven paragraph J has to be read
01:29:10 within the construct of the demand for bill of particulars
01:29:14 which it references which starts at paragraph nine through

01:29:17 ten and through eleven.
01:29:19 **Q.** Okay, can I ask you did he ask for one-hundred and
01:29:23 forty separate leads which were not given to him, yes or
01:29:28 no?
01:29:28 **A.** He asked for copies of lead sheets. I have no idea
01:29:32 what the numbers are.
01:29:33 **Q.** Okay, but there are a number of listed leads there,
01:29:36 correct?
01:29:37 **A.** They are in paragraph J.
01:29:39 **Q.** Yes.
01:29:39 **A.** Attorney Walsh, not Attorney Fahey.
01:29:42 **Q.** I get it.
01:29:42 **A.** Indicated a series of numbers numeric from three to
01:29:46 one-three-six-seven, yes.
01:29:49 **Q.** Okay, and he was saying he did not receive those
01:29:52 leads from you, correct?
01:29:54 **A.** He is demanding apparently as part of a bill of
01:29:57 particulars that the People provide information associated
01:30:00 with those leads as parts of the demand for bill of
01:30:03 particulars. It's specifically subsumed within the demand
01:30:08 for bill of particulars.
01:30:08 **Q.** Didn't you state that you had already provided the
01:30:13 entire, the entire Sheriff's Department's file in December
01:30:19 of 1994?
01:30:21 **A.** The file as far as it had gone on that particular

01:30:26 date. In other words, this was a work in progress, continues to be a work in progress, where the Sheriff's Department developed information that had leads associated with it and that information thereafter was disclosed in subsequent disclosure responses by the People.

01:30:46 **Q.** Are you saying that all of the leads that Mr. Walsh is referencing were occurring after the December date that the boxes were picked up? Is that your testimony?

01:31:00 **A.** My testimony is that when the documents that included -- correction. In the boxes that included the Sheriff's Department investigation report were provided to both counsel Walsh and Fahey, they included all of the leads and all of the information that were part of the Sheriff's Department investigation report as of the date that it was turned over, if memory serves, December fourteen, 1994.

01:31:24 **Q.** And these leads were labeled chronologically, correct? As they came in, like one would be the first lead, two would be the second lead?

01:31:31 **A.** Well, there are leads and lead sheets, but yes, leads are numbered chronologically, yes.

01:31:37 **Q.** So the beginning lead sheet that he's missing is lead number three. Are you saying that that wouldn't have been in the file in December of 1994?

01:31:46 **A.** Ms. Bianco, you misunderstand what I said.

01:31:49 THE COURT: Are you asking him if the lead is missing or the lead sheet? 01:31:51

01:31:52 **Q.** The lead sheet. He's asking for lead sheets that are missing, and it's my understanding, maybe I'm wrong, did you say the whole investigative file was available in December of 1994? 01:31:55 01:31:57 01:32:02

01:32:03 **A.** It was.

01:32:03 **Q.** Okay, but the leads that are referenced in Paragraph J of Mr. Walsh's motion, none of -- he's claiming that he didn't get any of those leads. Are you saying that they -- those wouldn't have been in the file at that time? 01:32:09 01:32:15 01:32:18

01:32:21 **A.** The leads in fact, the Oswego County Sheriff's Department investigation file which included a portion of the file that had to do with lead sheets that had a chronologic listing one through whatever it would be, were provided to attorneys Fahey and Walsh December fourteenth, 1994 in five boxes, and then subsequent to that, there was additional discoverable property that was disclosed to both counsel. 01:32:25 01:32:28 01:32:32 01:32:36 01:32:41 01:32:46 01:32:50

01:32:51 **Q.** Okay, in Mr. Walsh's motion, and you can count this if you want, but there is a hundred forty leads he says that he doesn't have. 01:32:57 01:32:59

01:33:00 **A.** He got them.

01:33:01 **Q.** He got them before they were in the box in December?

01:33:04 **A.** In December fourteen, 1994.

01:33:09 **Q.** Right.

01:33:09 **A.** The Oswego County Sheriff's Department investigation
01:33:12 report consisted of whatever lead or leads would have been
01:33:16 in the file at that time. A complete reproduction of the
01:33:21 portion of the file that identified leads by lead number
01:33:25 and lead sheets was made available to and provided to
01:33:29 attorneys Walsh and Fahey.

01:33:30 **Q.** So would it be your position that when he requested
01:33:33 these hundred and forty different leads, this would have
01:33:36 been a frivolous motion because he got them all?

01:33:38 MR. MOODY: I'm going to object, Judge, to
01:33:40 frivolous.

01:33:40 THE COURT: Sustained.

01:33:41 MR. MOODY: I think it's argumentative.

01:33:42 **Q.** Are you saying that those particular lead sheets,
01:33:45 the ones he's asking for in a written motion, were already
01:33:49 all in that file at that time December fourteenth, this is
01:33:54 a yes or no question, were they in the file at that time?

01:33:56 **A.** It's not subject to a yes or no answer.

01:33:59 **Q.** You just don't know whether they were there?

01:34:00 **A.** It's not subject to a yes or no answer.

01:34:02 MR. MOODY: Objection, Judge, argumentative.

01:34:02 THE COURT: Hold on, Mr. Dodd. Ms. Bianco,
01:34:05 don't argue with him, and I'm going to -- because you
01:34:07 kept using the word "lead" versus "lead sheet."

01:34:10 MS. BIANCO: I'm sorry, I meant to say "lead
01:34:13 sheets."

01:34:13 THE COURT: Thank you.

01:34:13 **Q.** The lead sheets which -- which Attorney Walsh was
01:34:18 requesting on January fifteen, is it your position that
01:34:24 they had already been given to him on December fourteenth,
01:34:28 1994 when he got the whole investigative file?

01:34:31 **A.** In that paragraph that your -- continue to
01:34:33 reference --

01:34:34 **Q.** Um hum.

01:34:35 **A.** -- there are a number of different numbers that
01:34:37 apparently relate to a lead sheet number designation
01:34:41 apparently, and again, this is the motion of Attorney
01:34:45 Walsh.

01:34:45 **Q.** Right.

01:34:45 **A.** I can tell you and the Court with certainty that on
01:34:48 December fourteen, 1994 the People provided to Attorney
01:34:54 Walsh and to Attorney Fahey a copy of the Oswego County
01:34:59 Sheriff's Department investigation which included copies of
01:35:03 lead sheets which would have had lead sheet numbers.

01:35:09 **Q.** And maybe I just don't understand that answer, but
01:35:12 are you saying these lead sheets with the numbers were
01:35:15 given to him in the whole investigative file on December
01:35:20 fourteenth, 1994, is that what you're saying?

01:35:23 **A.** Again, I will say the exact same thing I said to you

01:35:26 the last time. December fourteen, 1994 a complete 01:35:32 reproduction of the Oswego County Sheriff's Department 01:35:35 investigation report which included lead sheets designated 01:35:40 by lead sheet numbers were disclosed and provided to 01:35:44 Attorney Fahey and Attorney Walsh.

01:35:48 **Q.** But you acknowledge that you did receive this 01:35:51 motion, is that right?

01:35:51 **A.** I would have to -- I would have to look.

01:35:56 **Q.** Certainly.

01:35:57 **A.** I would assume it's an Omnibus Motion.

01:36:00 **Q.** Yes.

01:36:00 **A.** I would assume.

01:36:01 (Whereupon, there was a pause in the proceeding.)

01:36:09 **A.** Well, there's a part of it that's not. This is your 01:36:13 work product.

01:36:13 **Q.** Oh, I'm sorry, thank you.

01:36:14 **A.** Yes. This appears to be a copy of Attorney William 01:36:17 Walsh's general Omnibus Motion as it relates to Richard 01:36:21 Thibodeau, yes.

01:36:22 **Q.** Okay.

01:36:52 MS. BIANCO: If I may have a moment, Your 01:36:53 Honor.

01:36:53 THE COURT: Sure.

01:36:53 (Whereupon, there was a pause in the

01:36:54 proceeding).

01:37:06 **Q.** Well, doesn't Attorney Walsh on page twenty-eight
01:37:11 also ask for sanctions against you because you said you
01:37:15 were going to turn over the whole file and you didn't?
01:37:18 Didn't he ask for sanctions? And I'm going to show you
01:37:22 page twenty-eight.

01:37:22 **A.** I have no idea.

01:37:23 MR. MOODY: How is the asking for sanctions
01:37:25 relevant?

01:37:25 THE COURT: Especially when in Mr. Walsh's
01:37:29 motion.

01:37:29 MS. BIANCO: Judge, he's claiming that he gave
01:37:31 the same exact materials to both of these attorneys,
01:37:33 and now you have this attorney saying he didn't get a
01:37:36 bunch of things and at the same time asking for
01:37:39 sanctions against him. I mean unless Mr. Dodd is
01:37:43 claiming that Mr. Walsh got everything, he's just
01:37:45 making these frivolous motions for no reason at all, I
01:37:48 think this is relevant as to his credibility as to what
01:37:51 was and wasn't turned over. He did testify that the
01:37:54 whole file, the whole file was given on December
01:37:57 fourteenth, and then we have this motion in January
01:38:01 saying this didn't happen.

01:38:03 MR. MOODY: And I would also note, Judge, that
01:38:05 what we don't have is the response to the motion.

01:38:08 MS. BIANCO: He can put that in.

01:38:10 THE COURT: Answer the question.

01:38:12 THE WITNESS: Judge, in the fog here I've lost
01:38:14 track of what the question was, I'm sorry.

01:38:16 **Q.** The question was didn't Mr. Walsh ask for sanctions?
01:38:24 Specifically, counsel was advised by Assistant District
01:38:28 Attorney Donald Dodd that in addition to the entire Oswego
01:38:32 County Sheriff's Department investigative report which he
01:38:35 indicated in court on December eighth, 1994 that he had
01:38:38 already provided, he was going to provide counsel with the
01:38:41 entire file which counsel took to mean everything presently
01:38:45 in Mr. Dodd's possession and in possession of the Oswego
01:38:49 County Sheriff's Department. He goes on to talk about the
01:38:52 file he picked up on December fifteenth.

01:38:54 THE COURT: Hold on, Ms. Bianco. The question
01:38:56 was did he ask for sanctions.

01:38:58 **Q.** Did he ask for sanctions?

01:38:59 **A.** Miss, I'd have to look at the paper.

01:39:01 **Q.** Certainly. I want to show you page twenty-eight.

01:39:05 THE COURT: Any particular paragraph?

01:39:07 MS. BIANCO: It starts with motion for
01:39:08 sanctions. It's a few paragraphs long. Here's the
01:39:13 beginning of the motion if you need it.

01:40:20 (Whereupon, there was a pause in the
01:40:23 proceeding.)

01:40:23 **A.** He requests a hearing to determine whether or not
01:40:26 sanctions should be imposed.
01:40:29 **Q.** He was asking for sanctions though wasn't he, saying
01:40:33 you didn't provide him the discovery, is that fair?
01:40:35 **A.** That would be a fair reading of the document you
01:40:37 have provided to me, that portion of the document.
01:40:39 MS. BIANCO: Okay, I'd move to admit 142 into
01:40:46 evidence.
01:40:50 MR. MOODY: Judge, I don't believe it's
01:40:52 relevant at this point. I think she asked the question
01:40:54 and the answers are --
01:40:55 THE COURT: Can I see the draft of that?
01:40:59 MS. BIANCO: It's the whole -- the whole
01:41:00 document was filed in connection with these
01:41:02 proceedings.
01:41:03 THE COURT: Who drafted it?
01:41:04 MS. BIANCO: Attorney Walsh drafted it and it
01:41:06 was filed. It's a public record and he admitted he got
01:41:09 it.
01:41:09 THE COURT: It --
01:41:10 MR. MOODY: I don't think it's relevant, but I
01:41:14 have no objection. If I could just look at it.
01:41:17 THE COURT: It will move in. Do you want to
01:41:18 look at it?
01:41:20 MR. MOODY: And I do have the response.

01:41:34 THE COURT: You have the response?

01:41:35 MR. MOODY: I don't have it with me. It's back in the office. Didn't think that Walsh's responses would come up and I -- so I mean I have it but not with me is I guess my answer.

01:41:47 THE COURT: Okay, well, the way we're moving today, Mr. Dodd will probably be on the stand tomorrow so you can bring it tomorrow.

01:41:56 MR. MOODY: I hope he's not on the stand tomorrow. I have no objection, Judge. It appears to be complete.

01:42:01 THE COURT: I lost the number. Is that 142?

01:42:04 MS. BIANCO: This is Defendant's 142. It's not stapled, but I can staple it if you would like. I don't know if the staple will go through it. It's kind of thick. I'm going to double staple it.

01:42:26 THE COURT: No objection, Mr. Moody?

01:42:28 MR. MOODY: None.

(Defendant's Exhibit No. 142 was received in evidence).

01:42:31 THE COURT: Ms. Bianco, go ahead.

01:42:35 MS. BIANCO: Pardon, Judge?

01:42:36 THE COURT: Go ahead.

01:42:37 **Q.** Okay. Now I want to ask you some questions about December fourteenth, 1994, the day Attorney Fahey came to

01:42:57 pick up the discovery materials at your office, okay? We
01:43:07 already talked about the letter that you filed on December
01:43:14 twenty-first detailing the discovery information. Do you
01:43:17 remember that letter?

01:43:18 **A.** I remember the letter dated December twenty-first,
01:43:20 yes.

01:43:21 **Q.** Okay. Do you remember that when Attorney Fahey
01:43:26 picked up the documents at your office, you gave him three
01:43:30 choices as to how he could copy the materials. Do you
01:43:34 remember any of this?

01:43:35 **A.** I remember it fairly clearly, miss.

01:43:37 **Q.** Okay.

01:43:38 **A.** I was there.

01:43:39 **Q.** Great. One, he could select the documents he wanted
01:43:42 copied and use your photocopier, that was one option,
01:43:46 right?

01:43:46 **A.** Yes.

01:43:46 **Q.** The second was he could create a list of documents
01:43:49 he wanted and use your photocopy to photocopy everything,
01:43:53 use your photocopier, correct?

01:43:55 **A.** If he wished to, yes.

01:43:56 **Q.** And the third, he can take all five boxes with him
01:43:59 as a complete reproduction of the Oswego County Sheriff's
01:44:03 Department box, correct?

01:44:04 **A.** Yes.

01:44:05 **Q.** Okay, and he chose option number three, correct,
01:44:09 take the boxes?

01:44:10 **A.** He inspected the documents that were in the District
01:44:13 Attorney's Office and then he also elected to take the
01:44:16 documents contained within the five boxes, yes.

01:44:20 **Q.** Didn't you have him sign a letter that stated if he
01:44:22 agreed to, quote, take the five file boxes, not review the
01:44:27 contents prior to taking them, but acknowledge in a
01:44:32 separate memo that the contents of the boxes was a complete
01:44:35 reproduction of the Oswego County Sheriff's Department
01:44:39 criminal investigation report, he had to sign that letter
01:44:41 to take those boxes?

01:44:43 **A.** No, he did not.

01:44:44 **Q.** You would have given him the boxes if he didn't sign
01:44:47 the letters?

01:44:47 **A.** He was there on that date, and I was there, so I
01:44:50 have a clear recollection, and Attorney Fahey was allowed
01:44:53 the opportunity to physically inspect the entirety of the
01:44:57 Oswego County Sheriff's Department investigation report on
01:45:00 that date, to make it all available for his photocopy
01:45:03 inspection and review, if he elected to do so. In addition
01:45:06 to that, I then provided to him a complete copy that was
01:45:11 contained in five boxes that were given to him. He had two
01:45:15 procedural options available to him. First was inspect it
01:45:19 all, any portion of it.

01:45:21 **Q.** But my question to you, sir, is in the letter that
01:45:24 you had him sign, didn't --

01:45:26 **A.** Requested him to sign if he elected to.

01:45:28 **Q.** If he elected to do that, to not review the contents
01:45:31 prior to taking them. Isn't that what Exhibit 13 the
01:45:35 letter says?

01:45:35 **A.** Attorney Fahey is a very competent attorney. If he
01:45:38 took issue with any aspect of what it is I had written
01:45:41 there, most certainly he would exercise his option to not
01:45:46 sign something or modify something, Ms. Bianco.

01:45:48 **Q.** My question to you is is that what your letter said?

01:45:51 **A.** The letter contains the language that it contains,
01:45:54 yes.

01:45:55 **Q.** And you stated earlier that you were not there when
01:45:58 he was reviewing the materials, and you don't know how long
01:46:01 he reviewed them on that day.

01:46:02 **A.** I was, I was there. To refresh your recollection, I
01:46:05 told you I was there, that when he initially came I met
01:46:08 with Attorney Fahey in the room with attorney Whipple, or
01:46:12 correction, with Terry Whipple, the investigator, discussed
01:46:15 with him his ability to view everything that he wanted to
01:46:19 that was there, make reproductions, left, allowed him an
01:46:24 opportunity to do whatever he wished to do, and that at
01:46:27 some point, and I can't with a measure of certainty testify
01:46:30 as to how much time went by, then discussed with him

01:46:35 turning over to him the five boxes that contained an exact
01:46:38 reproduction of the Sheriff's Department investigation
01:46:40 report.

01:46:40 **Q.** He picked them up that day though, correct?

01:46:43 **A.** Best recollection is that he did, yes.

01:46:45 **Q.** And you weren't there when he was reviewing the
01:46:47 materials, correct?

01:46:48 **A.** Investigator do you mean inside the District
01:46:50 Attorney's Office?

01:46:50 **Q.** Yes, looking at the materials in the five boxes.
01:46:54 Didn't you say you left him?

01:46:55 **A.** No. He could review the entirety of the file.
01:46:59 Remember the boxes contained the reproduction. He had made
01:47:04 available to him the original Sheriff's Department
01:47:07 investigation file, everything that was there, he could
01:47:11 inspect any part, all of it or none of it. His election.
01:47:15 In addition to that, he was provided the five boxes that
01:47:20 contained an exact reproduction of the report.

01:47:23 **Q.** My question to you, sir, is were you there when he
01:47:26 looked at the boxes, the five boxes, didn't you say you
01:47:29 left, you showed him in and you left him with Investigator
01:47:33 Whipple to -- to do as he pleased, didn't you say that on
01:47:36 direct examination?

01:47:37 **A.** Yes.

01:47:37 **Q.** Okay, so you weren't there to see if he reviewed the

01:47:40 entire investigative file, is that right?

01:47:43 **A.** I don't know what he reviewed or didn't know and I wasn't there.

01:47:47 **Q.** Fair enough. And this is the same box of materials, his box --

01:47:51 **A.** Boxes.

01:47:52 **Q.** The five boxes were the same five boxes you provided to Attorney Walsh, correct?

01:47:57 **A.** Yes.

01:47:58 THE COURT: Ms. Bianco, I'm a little confused. You seem to be making reference to the Onondaga County Sheriff's Department file as to whether or not Mr. Fahey reviewed it but then you --

01:48:09 MS. BIANCO: The Oswego County.

01:48:10 THE COURT: I'm sorry, what did I say, Onondaga? I'm sorry, Oswego, and then the next question you say were you there when he reviewed the boxes.

MS. BIANCO: The box --

01:48:17 THE COURT: There's a distinction.

01:48:18 **Q.** Let me make -- let me make it clear then. You're saying there were five copies, five boxes of copies of the sheriff's file, correct?

01:48:26 **A.** Within the five boxes it was contained, the Oswego County Sheriff's Department file, a copy of it, yes.

01:48:32 **Q.** The exact replica of what was in the Sheriff's
01:48:36 Department original file was in the five boxes that were
01:48:39 provided to Fahey, correct?

01:48:41 **A.** The reproduction of it, yes.

01:48:45 **Q.** And that was the same exact materials that were
01:48:47 given to Walsh in five different boxes, correct?

01:48:50 **A.** Yes.

01:48:50 **Q.** These were the same materials that Attorney Walsh
01:48:54 was complaining he didn't have certain information,
01:48:57 correct?

01:48:58 **A.** He was provided the same discovery that Attorney
01:49:01 Fahey was discovered, or provided, yes.

01:49:03 **Q.** But this is the same group of information that he
01:49:06 was complaining that he didn't have the information.

01:49:08 MR. MOODY: I'm going to object. We covered
01:49:10 that issue.

01:49:11 THE COURT: Yeah, sustained.

01:49:12 **Q.** When we -- before we broke, you stated that the
01:49:22 Kleist report in 11-A, the Kleist report with the
01:49:29 confidential informant documents that you believe that they
01:49:32 were in the file at the time in March when Attorney Fahey
01:49:38 went to inspect the materials, you believe that they were
01:49:40 there, correct?

01:49:41 **A.** I would have to look at that document 11-A.

01:49:44 **Q.** Certainly. You don't remember what your testimony

01:49:46 was before the break?

01:49:47 **A.** Miss --

MR. MOODY: I'm going to object.

01:49:48 **A.** -- you have lots of documents that you're holding in
01:49:51 your hand and assuming that the witness knows what they
01:49:53 say. Out of fairness I need to look at them.

01:49:56 THE COURT: There is nothing wrong with
01:50:00 letting him look at the document.

01:50:14 **A.** I have reviewed it, 11-A.

01:50:15 **Q.** Okay, was it your testimony, maybe I heard you
01:50:19 wrong, that you believed that those materials were in the
01:50:23 Sheriff's Department's file at the time Attorney Fahey came
01:50:29 to review it in March of 1995. Did you say that?

01:50:35 **A.** The documents that are stapled to the letters of May
01:50:41 seventeen, 1995, 11-A, were the first document after the
01:50:46 cover letter was date stamped received by the District
01:50:50 Attorney's Office May sixteenth, 1995. Therefore, it could
01:50:54 not have been by reason of the District Attorney's having
01:50:57 received it. Could this document have been part of the
01:51:00 Oswego County Sheriff's Department investigation report
01:51:04 prior to that? I don't see a date on it. I don't see a
01:51:11 date on it.

01:51:13 **Q.** Well, I want to direct your attention, perhaps it
01:51:27 was on eleven, let me take a look at that.

01:51:30 THE COURT: Okay. Is it on eleven or 11-A?

01:51:50 MS. BIANCO: It's on 11-A, on page two.

01:51:53 **Q.** Isn't the report by Investigator Kleist dated 5/16,
01:51:59 ninety-five?

01:52:03 **A.** I can see the sixteen and I can see the ninety-five.
01:52:08 I -- I don't see that the month is set forth here.

01:52:17 **Q.** I'm going to take a look at Exhibit 11 if I could.
01:52:25 Showing you what's been marked Defendant's Exhibit 11,
01:52:30 wasn't this material plastic bag with miscellaneous papers,
01:52:36 photographs, 1993 personal planner, wasn't it not logged in
01:52:40 till May twenty-third, 1995?

01:52:44 **A.** Miss, I have no idea what question you're asking.
01:52:48 I'm looking at Exhibit 11-A. You handed me additional
01:52:51 document eleven. Document eleven or Exhibit 11 is --

01:52:55 **Q.** I can clarify my question. In document eleven, it
01:52:58 lists --

01:52:59 **A.** Exhibit 11.

01:53:00 **Q.** -- certain items of evidence, excuse me, Exhibit 11,
01:53:04 it lists certain items of evidence, a picture, a -- you see
01:53:07 on the very bottom paragraph it lists items that were
01:53:10 received into evidence, logged in by Investigator Kleist.

01:53:14 **A.** That's the date of the entry on the document, yes.

01:53:16 **Q.** And those seem to be referring to the same documents
01:53:21 that's in 11-A, is that right, the picture?

01:53:28 **A.** Bear with me, miss.

01:53:34 (Whereupon, there was a pause in the

01:53:50 proceeding.)

01:53:50 **A.** Eleven has an entry date of 5/23/95 specific to your question regarding the picture. It references photograph.

01:54:01 **Q.** And a 1993 planner also?

01:54:04 **A.** It does.

01:54:05 **Q.** Okay, papers, references, papers?

01:54:10 **A.** It speaks for itself. And the -- well, this document, page one of Exhibit No. 11, does not appear to be stapled to 11-A. It references certain items though. Eleven, page one, references on the entry of Investigator Kleist an entry date of 5/23/95, papers, photograph, which also in part is referenced by way of photograph on page two of Exhibit 11-A. Hand it back to you.

01:55:09 **Q.** Thank you. Now if you take a look at Exhibit 11, the Kleist report, and 11-A, the -- the Kleist report, the body of the report is the same is it not, it's just the stickers that are different, but doesn't that have a date on the corner?

01:55:36 THE COURT: Which one?

01:55:37 MS. BIANCO: I believe eleven has 5/16, it has the month that seems to be kind of off on one of the --

01:55:44 THE COURT: That's what?

01:55:46 THE WITNESS: That would be 11-A.

01:55:48 **Q.** If you take a look.

01:55:49 **A.** May sixteenth, 1995, is that what you're

01:55:52 referencing?

01:55:52 **Q.** I'm referencing over here.

01:55:54 **A.** Oh.

01:55:54 **Q.** Where you -- it's very hard to read.

01:55:57 **A.** Okay. Can I --

01:55:59 **Q.** Certainly.

01:56:02 **A.** Yes. Counsel has assisted the witness, is showing
01:56:08 me 11-A, page two, and it appears to have date of May
01:56:15 sixteenth, 1995.

01:56:17 **Q.** So you would agree that those documents could not
01:56:20 have been in the file in March of 1995 when Judge Fahey
01:56:26 reviewed it because they weren't created yet, is that
01:56:29 right?

01:56:29 **A.** I can't fault the logic of that.

01:56:32 **Q.** Now by the same token --

01:56:52 MS. BIANCO: If I may have just a moment, Your
01:56:55 Honor.

01:56:55 THE COURT: Um hum.

01:56:56 (Whereupon, there was a pause in the
01:57:11 proceeding.)

01:57:11 **Q.** Defendant's 8 and 9, that would be the VanPatten
01:57:15 report and the Montgomery report dated -- one is undated
01:57:20 but is marked received Oswego County Sheriff's Department
01:57:23 December ninth, 1994.

01:57:25 THE COURT: Which one is that?

01:57:26 MS. BIANCO: This one is Defendant's 9, the
01:57:28 VanPatten report, and the other one Defendant's 8, it
01:57:33 is the Montgomery report which has a date on it
01:57:37 December eighth, 1994.

01:57:40 **Q.** Don't both of these documents reference the
01:57:45 informant file being dropped on the floor outside the D & W
01:57:50 parking lot?

01:57:53 (Whereupon, there was a pause in the
01:57:55 proceeding.)

01:57:55 **A.** Exhibit 9, Deputy VanPatten, specifically references
01:58:35 the statement that he dropped the three by five index card
01:58:38 and photo of Heidi, and Exhibit No. 8, statement of
01:58:43 Montgomery, references that patrol was -- was that deputy
01:58:58 was provided apparently the three by five index card with
01:59:01 Heidi's name and address and phone number on it.

01:59:04 **Q.** So it's your contention that those two particular
01:59:09 documents were contained in the original Sheriff's file in
01:59:16 the District Attorney's Office when Judge Fahey or Attorney
01:59:20 Fahey went over to review them?

01:59:21 **A.** It's not a contention, it's a statement of fact.

01:59:24 **Q.** Okay, and you agree that the Heidi Allen
01:59:29 confidential informant card and picture and thumbprints and
01:59:34 notes connected with that were not in the file at that
01:59:37 time, correct?

01:59:38 **A.** I testified I don't know if they were in the file at

01:59:42 that time. Whatever was in the file which would be the
01:59:45 Oswego County Sheriff's Department investigation report, it
01:59:49 speaks for itself in terms of what was in there. These
01:59:52 documents in fact I know were part of the file, and they
01:59:56 were turned over to Attorney Fahey December fourteen, 1994.
02:00:01 In addition, you reference the photocopy of the index card,
02:00:08 the descriptors of Heidi Allen and a photograph of Heidi
02:00:12 Allen. That also was disclosed to Attorney Fahey.

02:00:14 **Q.** Right, and that's the one that was logged into
02:00:17 evidence on May twenty-third, 1995. Didn't we agree that
02:00:20 that's when it got into -- logged into evidence?

02:00:23 **A.** That's the date that appears on the report.

02:00:25 **Q.** Okay.

02:00:25 THE COURT: Ms. Bianco, I'm confused on where
02:00:28 you're going. Are you denying that they were
02:00:29 ultimately handed over to judge, I mean Mr. Fahey?

02:00:32 MS. BIANCO: Absolutely, Judge, I am denying
02:00:34 that.

02:00:34 THE COURT: How are you going to get to that?

02:00:37 MS. BIANCO: Well, I'm -- I'm trying to get to
02:00:39 the fact if you allow me a few more questions.

02:00:40 THE COURT: A few more.

02:00:41 **Q.** When you have those two documents which reference a
02:00:43 file, there's no correspondence from Attorney Fahey asking
02:00:49 for the specific file, correct?

02:00:52 THE COURT: Don't answer. I'm confused, absolutely confused about what you're now talking about.

02:00:57 **Q.** I'm talking about after you supposedly received those two documents which reference a file --

02:01:03 THE COURT: Eight and nine?

02:01:04 MS. BIANCO: Right.

02:01:04 **Q.** They reference a confidential informant file, correct?

02:01:32 **A.** The Exhibit 9 of VanPatten references a number of things, but amongst them would be that the reporter took a picture of Heidi and completed a three by five index card. I don't know that that's the file but that's what's referenced in December nine, 1994 statement by Deputy VanPatten.

02:01:53 **Q.** So you would agree that there would have been other documents associated with that report, correct, based on what's written there?

02:02:01 **A.** Yes.

02:02:01 **Q.** Right? And would you agree that during the motion argument on December eighth, didn't Attorney Fahey specifically ask for the confidential informant file? Didn't he ask for that?

02:02:20 **A.** Are you referencing the oral argument in front of Judge Brandt on December eighth, 1994?

02:02:27 **Q.** I am.

02:02:28 **A.** My best recollection, the record would speak for itself, but my best recollection is that we were there before Judge Brandt on a series of different pretrial issues, on a series of different pretrial issues.

02:02:41 **Q.** Well, would something refresh your recollection?

02:02:43 **A.** I'm answering the question, Ms. Bianco, that Attorney Fahey did argue to the Court, and best recollection is he indicated on the record that he had received information that Heidi Allen potentially had worked as confidential informant, that he'd received it from Attorney Walsh, that he was specifically requesting information to be disclosed to him associated with Heidi Allen either having provided information as a confidential informant or working as a confidential informant all of which was prior to the December fourteen, 1994 date when it was turned over to him.

02:03:13 **Q.** That's what I want to get at. The -- it was provided to him. The actual confidential informant file, the one with the picture, the one with the fingerprints, the one with the notes attached, the one with the pedigree information, that's what he was asking for on December eighth, correct?

02:03:33 **A.** Ms. Bianco, I'm struggling to recall clearly the oral argument, but I can testify that amongst the discovery

02:03:42 demands and requests of Attorney Fahey was a request for
02:03:47 discovery as it relates to information associated with
02:03:50 Heidi Allen either having provided information as a
02:03:53 confidential informant or working as a confidential
02:03:56 informant. Obviously he knew that to be able to make the
02:03:59 assertion. These documents were turned over.
02:04:01 Specifically, eight and nine were turned over to Attorney
02:04:05 Fahey on December fourteen, 1994.

02:04:08 **Q.** Okay, you said you were struggling to remember what
02:04:11 happened on --

02:04:11 **A.** Struggling to remember the precise words that were
02:04:15 articulated from December eighth of 1994.

02:04:17 **Q.** Would you like to see the precise words?

02:04:19 **A.** No, I don't need to.

02:04:21 **Q.** Okay, so he was asking for the actual file and the
02:04:26 actual file was not given to him in December of 1994.

02:04:33 **A.** Absolutely incorrect. Once again, it's incorrect.
02:04:36 He was provided. Ms. Bianco, again, on December
02:04:40 fourteenth, 1994, the statement of Deputy Mike Montgomery,
02:04:46 your Exhibit 8, he was provided. Your Exhibit No. 9, the
02:04:50 statement of Deputy VanPatten, he was provided. I don't
02:04:53 know if there's associated exhibit number. The statement
02:04:55 of Michael Anderson, I believe it was received December
02:04:59 nine, 1994. He was provided those documents, Ms. Bianco.

02:05:05 **Q.** I'm asking about the documents contained in

02:05:07 Defendant's Exhibit 11-A which were written May sixteenth, 1995. What he was requesting. There's a cover letter and then there's some informant documents, correct, and they're dated from 1991 when she gave her fingerprints. These were not given to him in December, is that right, 11-A what's logged in May twenty-third?

02:05:29 **A.** I can't speak to what it is that he -- was in his mind at that time nor can you. I know what it is that I recall him saying. These documents were provided to him and also the documents that you've shown me, I can't clearly recall the particular exhibit, included exactly the pieces of paper that you say that were not received. That would be a copy of the photograph of Heidi Allen, a copy of the card indicating certain descriptors and two thumbprints. The record reflects that that document was in fact turned over to Attorney Fahey and Walsh. I can't remember the exact date.

02:06:14 **Q.** Well, didn't they not find the document till May sixteenth, 1995 based on the document alone, they just found it on May sixteenth?

02:06:22 **A.** Can't testify to what was disclosed.

02:06:25 **Q.** So you're saying it was disclosed, the documents that are attached to the cover report along with her picture, sheriff's card?

02:06:33 **A.** Were disclosed.

02:06:34 **Q.** Fingerprints?
02:06:34 **A.** Were disclosed.
02:06:35 **Q.** Were disclosed before May sixteenth, 1995?
02:06:38 MR. MOODY: I'm going to object. This has
02:06:40 been asked and answered.
02:06:42 THE COURT: I'm completely confused, Ms.
02:06:44 Bianco. Are you saying 11-A was never disclosed?
02:06:47 MS. BIANCO: I'm saying 11-A was never
02:06:48 disclosed, and he's trying to say that it was disclosed
02:06:50 in March when they didn't even find it.
02:06:53 THE COURT: He never testified to that.
02:06:54 THE WITNESS: I didn't testify.
02:06:54 THE COURT: He thought it was filed. You
02:06:56 showed that it wasn't in the file. You never --
02:07:00 have -- you never asked him was this disclosed. Ask
02:07:02 him.
02:07:03 MS. BIANCO: Well, I want to know when it was
02:07:04 disclosed specifically.
02:07:05 THE COURT: Well, ask him a question then.
02:07:07 MS. BIANCO: Well, I did ask him a question
02:07:08 and I haven't gotten any answer that's consistent.
02:07:10 THE COURT: I honestly don't believe you
02:07:13 asked. You bounced back between eight and nine to
02:07:15 11-A. I'm having trouble following the roadmap right
02:07:19 now, and ask the question that you want answered. Was

02:07:21 it disclosed? I'm assuming you mean 11-A, correct?
02:07:25 The --

02:07:27 MS. PEEBLES: It was his position it was
02:07:29 disclosed. We are contending that it was never
02:07:31 disclosed.

02:07:32 THE COURT: That's fine but the question's
02:07:33 never been asked.

02:07:35 MS. BIANCO: Okay.

02:07:41 THE COURT: When you mean 11-A, do you mean
02:07:42 that portion of 11-A?

02:07:44 MS. BIANCO: I'm asking for this particular
02:07:45 portion of 11-A.

02:07:47 THE COURT: Okay.

02:07:47 MS. BIANCO: The one that has a document that
02:07:50 says it was created May sixteenth, then it has a card.

02:07:53 THE COURT: That's why I'm just trying to find
02:07:55 out what you're asking him.

02:07:56 MS. BIANCO: That's what I'm asking for.

02:07:58 THE COURT: If it was his position it was ever
02:08:00 disclosed.

02:08:00 MS. BIANCO: And it was logged in on May
02:08:02 twenty-third.

02:08:02 THE COURT: Logged into the Sheriff's
02:08:04 Department.

02:08:04 MS. BIANCO: From the Sheriff's Department.

02:08:05 THE COURT: It was logged in May sixteenth to
02:08:08 the DA's Office.
02:08:08 MS. BIANCO: Well, there's two different
02:08:09 dates, and the date stamp that --
02:08:11 THE COURT: Ask him a question about that
02:08:13 particular portion of 11-A please.
02:08:15 **Q.** Well, let me ask you this. Are you saying that the
02:08:25 confidential informant card with the picture on it and her
02:08:30 pedigree information was disclosed before May of 1995? Is
02:08:40 that your testimony? It was disclosed in December?
02:08:46 **A.** The dates of the letter and the affixed document
02:08:50 would be the dates I can testify with some measure of
02:08:54 reliability and certainty for the purposes of this
02:08:57 proceeding because it was affixed to that particular
02:09:01 letter. I can testify as to that reliably.
02:09:04 **Q.** Okay, and the letter that -- that you would agree,
02:09:08 the letter dated May seventeenth, 1995, the cover letter,
02:09:15 does not specify what was being disclosed. Would you agree
02:09:20 with that statement?
02:09:20 **A.** Again, I'd have to look at it, miss.
02:09:31 (Whereupon, there was a pause in the
02:09:32 proceeding.)
02:09:32 **A.** It specifies additional discoverable property.
02:09:36 **Q.** So the answer would be it doesn't specify
02:09:39 particularly confidential informant information, yes?

02:09:43 A. It evidences additional discoverable properties.

02:09:49 Q. You don't want to answer that question do you?

02:09:51 MR. MOODY: Objection, Judge.

02:09:52 THE COURT: Yeah, it's a little argumentative.

02:09:54 Q. What was your office's position about faxing
02:10:00 discoverable materials to the attorneys? Was that
02:10:03 prohibited?

02:10:04 MR. MOODY: Objection, Judge. What does this
02:10:06 have to do with a decision whether --

02:10:09 THE COURT: With regard to what? Hold on. I
02:10:11 didn't hear the objection.

02:10:12 MR. MOODY: I just -- I don't understand what
02:10:13 the position of the faxing would have to do with --

02:10:16 THE COURT: What's that position? Are you
02:10:18 saying that he chose not to fax? How's that relevant?

02:10:22 MS. PEEBLES: Did he say he chose not to fax?

02:10:24 MS. BIANCO: That's what I'm -- I'm asking.

02:10:26 THE COURT: Why is it relevant if he faxes or
02:10:30 not?

02:10:30 MS. BIANCO: Well, Michael Bohrer had
02:10:31 documents faxed to him by the District Attorney's
02:10:33 Office.

02:10:33 MR. MOODY: Objection. That's never been
02:10:35 established where he got those documents.

02:10:37 MS. BIANCO: I can establish it now through

02:10:38 this witness.

02:10:39 THE COURT: I'm going to sustain the objection.

02:10:41 MS. BIANCO: Are you prohibiting me from asking Mr. Dodd if he faxed documents to a primary suspect?

02:10:46 MR. MOODY: Objection, Judge.

02:10:46 THE COURT: Yes, I am. You're the one who calls him a primary suspect.

02:10:52 **Q.** I want to ask you some questions about the evidence that you produced at trial against Mr. Thibodeau.

02:11:11 THE COURT: Which Mr. Thibodeau?

02:11:12 **A.** Gary Thibodeau?

02:11:14 **Q.** Gary Thibodeau, yes.

02:11:14 **A.** Thank you.

02:11:15 **Q.** Can we agree that you never presented any evidence that Heidi Allen was a -- alleged to be an informant during Heidi Allen's trial?

02:11:51 MR. MOODY: Objection. What does the evidence that's produced at trial have to do with whether this material was disclosed?

02:11:57 MS. BIANCO: Well, Judge, I could tell you that he presented the position that through two jailhouse informants, that somehow Heidi Allen was involved in drug use with these two jailhouse snitches,

02:12:13 and if he had information that she was an informant, it
02:12:17 would have undermined his entire theory of the case.
02:12:20 What would an informant be doing --
02:12:23 THE COURT: That's not before me. The
02:12:24 underlying theory of the case is not before me. This
02:12:27 is a 440 motion on Brady information and new evidence
02:12:30 only. Limit it to that, please.
02:12:32 MS. BIANCO: Judge, this is why I contend it's
02:12:33 relevant. If the defense would have gotten this
02:12:36 information that she was an informant, they would have
02:12:38 been able to impeach the witnesses with the fact that
02:12:42 the informant as the police well knew, and I think the
02:12:45 police officer will testify --
02:12:47 THE COURT: You're making an awful lot of
02:12:49 statements of people who are not here and that's not
02:12:52 before the Court.
02:12:53 MS. BIANCO: Well, one of officers is going to
02:12:54 testify that when they sign up an informant, they
02:12:56 cannot be using or buying drugs. They cannot be using
02:12:59 or buying drugs.
02:13:00 MR. MOODY: Judge, I'm going to object, Judge.
02:13:01 MS. BIANCO: Can't I just make my record
02:13:04 before he objects? I just want to make a record.
02:13:05 THE COURT: Sure.
02:13:07 MS. BIANCO: That she was not using or buying

02:13:08 drugs. Now you have testimony being presented at Gary
02:13:11 Thibodeau's trial that -- that Heidi Allen, who was a
02:13:14 nice girl, who wasn't using drugs, was in fact possibly
02:13:18 using drugs with these two people. Mr. Dodd stated on
02:13:22 closing argument that maybe her family and friends
02:13:25 don't really know her that well.

02:13:28 THE COURT: That's not before the Court, Ms.
02:13:29 Bianco.

02:13:30 MS. BIANCO: But that's the point. Had the
02:13:31 information been provided to the defense, it's evidence
02:13:33 that infers that the defense didn't have it.

02:13:36 THE COURT: He first off --

02:13:37 MS. BIANCO: What's that?

02:13:38 THE COURT: First off, Mr. Dodd has testified.
02:13:39 He has testified that information was provided. He
02:13:42 said either in December or May. May.

02:13:46 MS. BIANCO: March.

02:13:46 THE COURT: Excuse me, sorry, no, May
02:13:48 fifteenth wasn't it?

02:13:49 MS. BIANCO: Well, the first -- there's two
02:13:50 times that he went to see it.

02:13:52 THE COURT: Correct.

02:13:52 MS. BIANCO: December.

02:13:53 THE COURT: He said it was disclosed either
02:13:55 December or in May.

02:13:56 MS. BIANCO: Well, this goes directly to his credibility, Judge.

02:13:58 THE COURT: No, it doesn't, Ms. Bianco.

02:13:59 MS. BIANCO: If he's presenting this big theory.

02:14:01 MS. PEEBLES: I also want to note that the record --

02:14:04 THE COURT: Listen. I'm not going to sit here and argue with the two of you. I'm going to sustain the objection. I find it to be completely outside the scope of the motion. There. You're records made. Move on. Thank you.

02:14:12 MS. BIANCO: I don't think my record is made. Could I say a few more words?

02:14:15 THE COURT: No. I'm not going to sit here and argue with you.

02:14:23 **Q.** You testified on direct examination about Michael Bohrer and his connection with this investigation, is that right?

02:14:32 **A.** I was asked questions and responded, yes.

02:14:34 **Q.** Okay, and Mike -- you read the pieces of paper as they related to Michael Bohrer because you read everything in the case, correct?

02:14:42 **A.** Yes.

02:14:43 **Q.** Did you run a criminal history check on Michael

02:14:48 Bohrer?

02:14:48 **A.** Did I?

02:14:49 **Q.** Or anyone under your direction, someone from the
02:14:52 Sheriff's Department perhaps, because you were in charge
02:14:55 and you were looking at everything.

02:14:57 **A.** I wasn't in charge. I was the district attorney
02:14:58 assigned the case. The Sheriff's Department was in charge
02:15:01 of the investigation and also in charge of the file.

02:15:06 **Q.** Were you aware about Michael Bohrer's prior criminal
02:15:10 record at the time that this case was proceeding to trial?

02:15:15 **A.** I don't know that Michael Bohrer has a prior
02:15:17 criminal record.

02:15:17 **Q.** So you weren't -- your testimony is you were not
02:15:20 aware at that time, and I'll ask you specifically, were you
02:15:23 aware that in 1981 he was convicted of unlawful
02:15:28 imprisonment of another woman?

02:15:29 MR. MOODY: I'm going to object, Judge.

02:15:33 THE COURT: Sustained. He is not the
02:15:33 investigator. He is the district attorney.

02:15:36 MS. BIANCO: But he's the one who would be
02:15:36 disclosing the Brady material. This would have been
02:15:38 Brady. It should have been disclosed.

02:15:40 THE COURT: Sustained.

02:15:42 MR. MOODY: How is -- how is --

02:15:43 THE COURT: Sustained.

02:15:44 MR. MOODY: Thank you.

02:15:45 THE COURT: Sit down.

02:15:46 **Q.** You testified regarding the prosecution of James
02:15:53 Steen. Do you remember that testimony?

02:15:54 **A.** I do.

02:15:55 **Q.** And during the course of the prosecution against
02:15:58 James Steen, the District Attorney's Office subpoenaed his
02:16:02 phone records, correct?

02:16:04 **A.** Best recollection is yes.

02:16:06 **Q.** Okay, and you reviewed those phone records, correct?

02:16:10 **A.** Phone records attributed to whom?

02:16:12 **Q.** James Steen.

02:16:13 **A.** There were a number of phones, Ms. Bianco,
02:16:16 associated with the hostage scene which turned into a
02:16:20 homicide scene. There were a number of cell phones that
02:16:23 were recovered inside of the murder scene.

02:16:26 **Q.** Well, let me specify my question. Maybe I can be
02:16:29 more particular. Were you aware of a text that James Steen
02:16:33 received --

02:16:33 MR. MOODY: I'm going to object. Beyond the
02:16:35 scope.

02:16:35 MS. BIANCO: Can I at least ask the question?

02:16:36 THE COURT: Let her ask the question first.

02:16:38 **Q.** Were you aware of a text that James Steen received
02:16:42 ten minutes after the murder of his wife that said "Heidi

02:16:47 ciao." Were you aware of that?

02:16:49 MR. MOODY: Objection. Beyond the scope of
02:16:50 the --

02:16:50 THE COURT: Sustained.

02:16:52 MS. BIANCO: Judge, am I not allowed to ask
02:16:54 him whether he looked into that, whether there was any
02:16:56 information about that, whether he knew anything about
02:16:58 a connection with James Steen? He just said he wasn't
02:17:01 a suspect, he had nothing to do with this I believe on
02:17:03 direct. Did he become a suspect later? Did he find
02:17:06 out? I think I'm entitled to ask him.

02:17:07 THE COURT: I'm not sure I'm following your
02:17:09 argument right now, Ms. Bianco. Explain to me what the
02:17:12 point is of that question please.

02:17:14 MS. BIANCO: He testified during
02:17:15 cross-examination that there's no information --

02:17:17 THE COURT: Mr. Dodd you mean?

02:17:18 MS. BIANCO: Mr. Dodd, that there is no
02:17:19 information about James Steen basically relating to
02:17:23 this case. Well, when something did come up, "Heidi
02:17:28 ciao," that could be information relating to this case.
02:17:31 I'm asking if he looked into that, that's all.

02:17:34 THE COURT: Mr. Moody?

02:17:35 MR. MOODY: Judge, I -- just first off, it's
02:17:37 beyond the scope of direct, and that evidence is in, it

02:17:40 would have occurred 2010, so twenty or eighteen years,
02:17:47 seventeen, sixteen years later? I went to public
02:17:50 school.

02:17:51 MS. BIANCO: The disclosure is a continuing
02:17:54 obligation.

02:17:56 MR. MOODY: Judge, the problem is the text
02:17:58 doesn't say "Heidi Allen ciao," it says "Heidi ciao."

02:18:02 THE COURT: I'll allow the question. Does
02:18:04 it -- did you review a text saying "ciao Heidi." Ms.
02:18:08 Bianco, ask that single question.

02:18:11 MS. BIANCO: May I have a moment, Your Honor?

02:18:13 THE COURT: Sure.

02:18:13 (Whereupon, there was a pause in the
02:18:26 proceeding.)

02:18:26 THE COURT: Ask that question.

02:18:28 **Q.** Did you look into the meaning of "Heidi ciao?"

02:18:34 MS. BIANCO: Is that what the question I'm
02:18:35 allowed to ask?

02:18:36 THE COURT: No. The question is did you
02:18:37 review a text that said "Heidi ciao."

02:18:39 **Q.** Did you review a text that said "Heidi ciao" that
02:18:42 went to Mr. Steen's phone? I can show you the exhibit if
02:18:47 it would refresh your recollection.

02:18:48 **A.** I'm trying to remember. I don't have a recollection
02:18:56 of any text messages that were received purportedly to the

02:19:05 cell phones that were inside of the homicide scene, and I
02:19:08 have to correct one thing. The one thing that you just
02:19:11 referenced that he received, purportedly received something
02:19:14 regarding "Heidi ciao" ten minutes after the death of
02:19:17 Victoria Steen, that was not established, miss, that was a
02:19:20 hostage situation that lasted for many hours during which
02:19:22 the sheriffs thought persons were alive.

02:19:25 **Q.** So if he testified that that text went to his phone
02:19:27 he'd be a liar?

02:19:29 **A.** I will not --

02:19:30 MR. MOODY: Objection. I don't think that's
02:19:32 what he said.

02:19:33 THE COURT: I'm going to sustain the
02:19:34 objection.

02:19:35 **Q.** Well, let me ask you this in regards to Michael
02:19:39 Bohrer. Would it have been significant information if you
02:19:44 knew Michael Bohrer had previously abducted another female?
02:19:48 Would that have been significant to you?

02:19:51 **A.** Within what context, miss?

02:19:53 **Q.** Within the context of her leaving a restaurant, then
02:20:00 following her --

02:20:01 MR. MOODY: Objection. I don't believe that's
02:20:02 the context.

02:20:03 MS. BIANCO: He wants to know what context.

02:20:03 THE WITNESS: The context of the --

02:20:05 THE COURT: Sustained in terms of your present
02:20:07 context.

02:20:08 MS. BIANCO: I'm not sure if I'm allowed to --
02:20:10 he's asking me a question, he doesn't want to answer my
02:20:13 question, he wants to know the context, I'll give him
02:20:14 the context.

02:20:15 THE COURT: No. He asked -- she's trying to
02:20:17 get into evidence what's not been proved in court.

02:20:19 **Q.** Well, I'm asking if you knew that Michael Bohrer had
02:20:23 been previously convicted of abducting a twenty-one year
02:20:26 old female by grabbing her from behind and pushing her in a
02:20:30 car while hitting her, with another man in the car, would
02:20:34 that have been significant to you?

02:20:35 **A.** Associated within the construct of the investigation
02:20:39 of the abduction of Heidi Allen?

02:20:42 **Q.** Yes.

02:20:42 **A.** Absolutely, to the extent that any suspect, any
02:20:45 individual as part of the investigation, if there were
02:20:49 facts that would be reliably developed establishing that a
02:20:52 person may have been involved in or a witness to the
02:20:55 abduction of Heidi Allen in the first instance, the
02:20:57 Sheriff's Department certainly would have investigated
02:21:00 that.

02:21:00 **Q.** I'm not asking about Heidi Allen. If you knew he
02:21:03 had a previous abduction, would that have been significant

02:21:06 to you, Michael Bohrer abducting another female from a
02:21:10 parking lot by choking her and dragging her into a car,
02:21:13 would that have been important to you?

02:21:15 **A.** Within the construct of the abduction of Heidi
02:21:20 Allen?

02:21:20 **Q.** Yes.

02:21:22 **A.** Certainly to the extent that there was reliable
02:21:26 information that an individual had previously participated
02:21:28 in imprisonment or abduction of an individual, that
02:21:32 absolutely would be something that should be considered by
02:21:34 a prosecutor on the issue of whether or not there is some
02:21:37 measure of relationship between the previous conduct of
02:21:39 that person to the matter before the -- presently
02:21:44 presenting to the investigation. That was not the case
02:21:46 here though.

02:21:48 **Q.** You had no information about Michael Bohrer's past
02:21:52 criminal history, is that your testimony?

02:21:54 **A.** There was information about Michael Bohrer in the
02:21:57 report, I'm drawing from memory, Ms. Bianco, I truly am, I
02:22:01 can recall that he was interviewed by --

02:22:05 **Q.** I guess my question is --

02:22:06 **A.** I'm answering the question, I'm answering the
02:22:09 question.

02:22:09 MS. BIANCO: Judge, he's non-responsive. I'm
02:22:11 just asking if he knew about the criminal history.

02:22:13 THE COURT: He already answered the question earlier. He said no about ten minutes ago. He answered that question about Michael Bohrer.

02:22:20 **Q.** Do you have any specific document that you wrote from the inception of the case, the Heidi Allen case, until the time Gary Thibodeau was convicted, a specific document that specifically references attached enclosed, however you want to say it, are -- is information regarding Heidi Allen and her confidential informant status. Do you have any specific document with those words specifically saying confidential informant, we're disclosing this to you, do you have any document like that?

02:23:01 MR. MOODY: Objection. I believe this has been asked and answered a number of times.

02:23:05 THE COURT: He can answer it if that's the only question because it has been asked and answered. Answer the question.

02:23:10 **A.** She was referenced within the construct of the Oswego County Sheriff's Department investigation report specifically which included the statements of Deputy VanPatten, Michael Anderson, Roy Lortie, describing Ms. Allen's having previously provided information.

02:23:32 **Q.** So the answer is a specific reference that says confidential informant document, the answer would be no?

02:23:37 **A.** It was referenced within the Sheriff's Department

02:23:39 report, yes, it was.
02:23:41 MS. BIANCO: May we have a moment, Your Honor?
02:23:44 THE COURT: Sure.
02:23:54 (Whereupon, there was a pause in the
02:23:56 proceeding.)
02:23:56 MS. BIANCO: Judge, can we have a five-minute
02:23:59 break?
02:24:00 THE COURT: Actually I'm going to break for
02:24:01 about ten minutes any way. It's almost 2:30. Court's
02:24:03 in recess until 2:30. I'm sorry, 2:35, I apologize.
02:24:48 Make it a fifteen-minute break.
02:24:52 (Whereupon, there was a recess.)
02:42:03 MS. BIANCO: Judge, I don't think I have any
02:42:05 more questions of the witness, but I would like to make
02:42:07 a proffer for the record of what I'd like to ask Mr.
02:42:11 Dodd with the understanding that if the Court says no,
02:42:14 I won't be able to ask him, but if the Court says yes,
02:42:17 he's here and I can ask him.
02:42:18 THE COURT: That's fine, and if the Court says
02:42:20 no, we'll then have to wait for Mr. Moody because it's
02:42:23 going to be for redirect, right?
02:42:26 MR. OAKES: Correct.
02:42:26 MS. BIANCO: Judge, it's our position that we
02:42:29 should be able to ask Mr. Dodd questions that occurred
02:42:34 during the course of the trial which would be

02:42:36 indicative of the fact that the material was not
02:42:39 disclosed, specifically with regards to the
02:42:43 fingerprints on the back of the Heidi Allen
02:42:46 confidential informant card. There's testimony from
02:42:49 three or four witnesses about the fingerprints,
02:42:52 about -- they were thumbprints, about where the
02:42:55 thumbprints came from, and Mr. Dodd is asking some of
02:42:59 the questions. If he had information that was
02:43:02 disclosed to defense that the thumbprints, that he had
02:43:07 thumbprints that the police took from Heidi Allen on
02:43:10 the back of the card, not thumbprints lifted from off
02:43:14 of a notebook, it would have been disclosed on the
02:43:16 record because that certainly would have been more
02:43:18 reliable when you're comparing prints from the scene of
02:43:21 the crime versus prints lifted off a notebook which may
02:43:25 or may not have been Heidi Allen's. They had
02:43:28 professional prints.

02:43:28 THE COURT: How could the attorney's strategy
02:43:32 be indicative of non-disclosure of Brady information?
02:43:36 Go ahead.

02:43:36 MS. BIANCO: Well, when judge -- when Attorney
02:43:37 Fahey is asking if they had any thumbprints
02:43:39 specifically, and they're saying they pulled them off
02:43:42 of the notebook, I think, and Mr. Dodd is going along
02:43:47 with that and asking where do you get them from, if he

02:43:50 didn't bring out that they had them on file already, 02:43:52 it's indicative that it shows Mr. Fahey didn't know 02:43:56 about that and also --

02:43:56 THE COURT: Could it have been indicative that 02:43:58 Mr. Fahey forgetting that he had gotten that and 02:44:02 forgetting he had gotten that discovery? It's the same 02:44:05 argument.

02:44:06 MS. BIANCO: Well, you can -- you can argue 02:44:07 that, but then here's I think more significant. 02:44:09 Baldasaro and McDonald, these are the two jailhouse --

02:44:13 THE COURT: Snitches.

02:44:13 MS. BIANCO: -- snitches that said that Gary 02:44:16 Thibodeau confessed to them, and this was supposed to 02:44:18 be a drug-related motive, that Heidi Allen was using 02:44:21 drugs with Gary Thibodeau and somehow he had screwed 02:44:24 her out of a deal and therefore he did to her or did 02:44:30 her in because of this. Now, if Heidi Allen was an 02:44:34 informant, and Joe Fahey had known about this informant 02:44:40 information, it could be used in two ways. One, that 02:44:43 first of all, Heidi Allen was not into using or doing 02:44:47 drugs, that Mr. Dodd knew this, and notwithstanding 02:44:51 that, he's arguing on summation that maybe her family 02:44:55 doesn't really know her, and two, it would have 02:44:58 undermined the entire theory of the prosecution that 02:45:03 this is a drug-related motive. She didn't do drugs,

02:45:05 she didn't use drugs, she didn't sell drugs, and you're
02:45:09 presenting this as this is the motive for why she's --
02:45:11 why she died and it's just --

02:45:13 THE COURT: But the same argument I made to
02:45:15 you again.

02:45:15 MS. BIANCO: He forgot?

02:45:16 THE COURT: That's not indicative of
02:45:17 non-disclosure.

02:45:18 MS. BIANCO: Well, I think for an experienced
02:45:19 and accomplished attorney like Joe Fahey, the whole
02:45:22 idea that he would have ignored all of this and ignored
02:45:26 the fact that there's other reasons or other motives
02:45:28 for people to --

02:45:29 THE COURT: But you're asking me to make a
02:45:31 decision based purely on assumption --

02:45:34 MS. BIANCO: I'm not asking you --

02:45:35 THE COURT: -- not hard facts.

02:45:36 MS. BIANCO: I'm not asking you to make an
02:45:39 assumption.

02:45:39 THE COURT: Yes, you are.

02:45:40 MS. BIANCO: I'm asking you to look at the
02:45:41 record and see what should have or would have been in
02:45:42 there and take that under consideration.

02:45:44 THE COURT: In your opinion as a defense
02:45:46 attorney it would have or should have or could have.

02:45:49 MS. BIANCO: Well, he said it on the stand
02:45:50 that it would have. He testified that had I known that
02:45:52 she was an informant, it would have showed that there
02:45:54 were other people who might have wanted to harm her.
02:45:57 He testified to that.

02:45:58 THE COURT: But you also --

02:45:59 MS. BIANCO: When I say "he," Judge Fahey.

02:46:00 THE COURT: I understand that you also -- you
02:46:03 also have testimony that says the information was
02:46:04 provided, okay. It comes down to who -- who's more
02:46:07 credible in that disclosure issue. You're -- you're --
02:46:10 you're challenging strategy. I don't think you can do
02:46:12 that honestly.

02:46:14 MS. BIANCO: I'm not challenging strategy, I'm
02:46:17 saying by inference it's not there which shows Judge
02:46:20 Fahey testified he never received it, never received
02:46:22 it, didn't know about it.

02:46:23 THE COURT: I have difficulty -- even taking
02:46:25 into consideration what Judge Fahey testified to, okay,
02:46:27 and then Judge Walsh didn't seem to remember anything
02:46:32 about what was given to him, I don't see how I can make
02:46:34 that leap to allow you to discuss what happened.
02:46:37 Again, I think you're asking me to challenge a question
02:46:40 because he didn't raise it, it didn't get discovered.
02:46:46 Mr. Oakes, what is your position?

02:46:48 MR. OAKES: I guess dealing first with the
02:46:50 issue of should these questions be put to Mr. Dodd
02:46:52 because I think that's really the issue presented with
02:46:55 here, and I don't see the relevance of asking Mr. Dodd
02:46:57 about the trial testimony and questions that were posed
02:47:02 when the record speaks for itself as to what questions
02:47:06 were asked and answered. I think it calls for Mr. Dodd
02:47:08 to engage in a fair bit of speculation, find out would
02:47:12 it have changed Judge Fahey's trial strategy, could
02:47:15 that information have been used differently by the
02:47:18 defense at the time of trial. This witness, Mr. Dodd,
02:47:21 is not in a position to speak to Judge Fahey's state of
02:47:24 mind or the information. The idea that --

02:47:28 MS. BIANCO: Judge --

02:47:29 THE COURT: Hold on. Let him finish.

02:47:31 MR. OAKES: The idea of her being a
02:47:34 confidential informant, I mean Judge Fahey certainly
02:47:36 could have been aware of that information and testified
02:47:39 by Mr. Dodd and disclosed, but given the testimony of
02:47:42 Baldisaro and McDonald that this was drug related,
02:47:47 there was a drug motive, as a defense attorney, Judge
02:47:50 Fahey could have looked at it and said if I introduce
02:47:52 the CI evidence, I tie her then into the drug world and
02:47:56 potentially gives credence to what McDonald and
02:47:59 Baldasaro were saying, so maybe it's better to stay

02:48:02 away from it, and the point that I think keeps getting 02:48:05 missed is the defense is trying to conflate or 02:48:10 basically compress the time period of when Heidi Allen 02:48:15 first interacted with Investigator Anderson or 02:48:19 VanPatten and gave them information, which again, Mr. 02:48:23 Dodd I think has clearly drawn a distinction between 02:48:26 providing information such as the high school student 02:48:30 saying here's the drug activity in my school, be not 02:48:34 typical confidential informant and being the type of 02:48:38 confidential informant that actively goes out and 02:48:40 assists in buys, provides information relative to a 02:48:43 search warrant, a more active confidential informant. 02:48:46 There is no testimony before the Court here, nor at 02:48:48 trial, that she was that type of active confidential 02:48:51 informant.

02:48:52 And when I talked about compressing that, 02:48:55 we're talking about a young lady provided information 02:48:57 in the fall of ninety-one. The abduction as we all 02:49:02 know took place in April of ninety-four, essentially 02:49:04 two and a half years later. To say that her 02:49:08 behavior -- again, I'm not using drugs or whatever it 02:49:10 may have been in September of ninety-one relates to her 02:49:14 conduct two and a half years later, I think if you talk 02:49:17 to any parent of a teenager, in those years that 02:49:20 behavior can change dramatically, and that's not to

02:49:23 impugn or suggest that Ms. Allen was doing drugs, but
02:49:28 to say that her status from two and a half years prior
02:49:30 is relevant then to the time of her abduction, I just
02:49:34 don't see it.

02:49:35 THE COURT: Ms. Bianco?

02:49:36 MS. BIANCO: Well, Judge, addressing the last
02:49:39 argument that Mr. Oakes made first, whether she was or
02:49:43 wasn't an active confidential informant isn't the
02:49:46 issue. The fact is the materials were dropped on the
02:49:50 floor of a parking lot, and it's others' perception of
02:49:53 what she was that really is the issue. People think
02:49:56 she was an informant, that could be a motive to harm
02:49:59 her. The idea that --

02:50:01 THE COURT: I don't mean to cut you off, but
02:50:03 remind me when they were dropped. Weren't they dropped
02:50:05 in ninety-one?

02:50:06 MR. OAKES: January twenty-third of
02:50:07 ninety-two, Your Honor, and again --

02:50:09 MS. BIANCO: Assuming that card is right which
02:50:12 it says property, Donald Dodd doesn't know anything
02:50:14 about that and it doesn't specify.

02:50:16 MS. PEEBLES: Well, excuse me, also, but
02:50:18 Kristine Duell wrote a statement that said she found
02:50:20 those documents in the parking lot in the summertime
02:50:23 while she was sweeping the parking lot.

02:50:25 THE COURT: So that's even further time
02:50:27 removed.

02:50:28 MS. BIANCO: Right.

02:50:29 MS. PEEBLES: So we don't know and --

02:50:30 THE COURT: You don't want to rely on the
02:50:32 summer of ninety-one versus January of ninety-two.

02:50:34 MS. PEEBLES: We just don't know, Judge, and
02:50:35 we know she was signed up after. What we're saying is
02:50:37 it could have been the summer of ninety-two when the
02:50:40 documents or the summer of ninety-three and here's why.
02:50:43 That card doesn't specify what was exactly found, and
02:50:47 the sheriffs would go to the D & W parking lot
02:50:49 frequently. I guess we'll have to wait to hear from
02:50:52 Ms. Duell when she explains why she gave an affidavit
02:50:55 suggesting she found those documents in the summertime
02:50:57 in the parking lot while she was sweeping.

02:50:59 MS. BIANCO: Judge, to continue, the fact that
02:51:04 Mr. Oakes is somehow arguing that Judge Fahey made a
02:51:06 strategic decision, he testified there was no strategic
02:51:10 decision. I just didn't have them. Supposedly Mr.
02:51:13 Dodd gave these documents again and again and again.
02:51:16 The last time was in May and June of 1995. It would be
02:51:21 hard to imagine that he would forget receiving them
02:51:24 multiple, multiple times. That strains -- that just
02:51:28 strains credibility, and it's our position that Mr.

02:51:32 Dodd didn't give those documents, that he was 02:51:35 suppressing evidence, that that was his -- he 02:51:38 suppressed it because it undermined his motive of the 02:51:41 case, undermined his motive meaning this was somehow 02:51:44 drug related. That is our position.

02:51:47 THE COURT: Mr. Oakes, one more time? In 02:51:50 response?

02:51:51 MR. OAKES: The issue -- part of the issue 02:51:54 that was raised by counsel in her first argument though 02:51:57 was regarding the questions at trial regarding the 02:51:59 fingerprints. Again, it was talked about this 02:52:03 fingerprints and that card coming out in May of 02:52:06 ninety-five. Again, at the time the investigators were 02:52:09 investigating the case in April of ninety-four and the 02:52:12 weeks following that, the investigators who were 02:52:16 working on the ground lifting the prints from the 02:52:18 notebook may not have been aware of the fingerprint 02:52:19 card, so they were actively working trying to pursue 02:52:23 information, trying to gather fingerprints to put in 02:52:25 evidence and, you know, when Ms. Bianco points to 02:52:29 testimony where they say, you know, that particular 02:52:31 witness being unaware of fingerprint cards, it's a big 02:52:35 organization. That investigator, witness, deputy who 02:52:39 has testified may not have been aware of the thumb 02:52:41 fingerprint card, the CI card until weeks or months

02:52:46 later on.

02:52:46 THE COURT: Because I forget the name of the
02:52:49 deputy who testified about the thumbprints, was it one
02:52:51 of the ones on the -- the CI people?

02:52:55 MS. PEEBLES: First of all, to clarify the
02:52:56 record, the question was does the Sheriff's Department
02:52:59 have on record any fingerprints of Heidi Allen. That
02:53:02 was the question by Mr. Fahey.

02:53:03 THE COURT: That's fine, but which deputy was
02:53:06 asked that question?

02:53:07 MS. PEEBLES: Kleist and Yerdon, both of them,
02:53:09 and I might add Kleist and Yerdon were the two that
02:53:11 found the stuff in the secured box on May sixteenth and
02:53:14 wrote a report, so I think it's a little bit of a
02:53:17 stretch to suggest for a minute that they didn't know
02:53:18 those thumbprint cards existed, and they were
02:53:21 specifically asked questions about whether the OCD, and
02:53:24 the interesting part about the testimony, Judge, is the
02:53:27 fact that when Yerdon was asked, he said well, there
02:53:29 may have been a thumbprint, and then the question is
02:53:32 well, do you know -- from Dodd, do you know who
02:53:34 collected that thumbprint, and he said no, I do not.
02:53:36 When he's questioning Kleist about the fingerprints, he
02:53:39 asks him did you collect fingerprints and he says yes,
02:53:42 off notebooks. Do you know if there were any other

02:53:45 fingerprints. He never says anything about the
02:53:47 thumbprint cards that they actually had.

02:53:48 THE COURT: But if you take that in context to
02:53:50 the line of questioning, it sounds like the question is
02:53:53 did you take any of the fingerprints from the crime
02:53:56 scene.

02:53:56 MS. PEEBLES: Not the question. That's not
02:53:57 the question.

02:53:58 THE COURT: But that's how it could be
02:54:00 perceived.

02:54:00 MS. PEEBLES: Well, no, no. If we're allowed
02:54:02 to elicit the testimony, what you're going to find is
02:54:05 Attorney Fahey was questioning the witness regarding
02:54:08 whether they had taken fingerprints from the money out
02:54:12 of the cash register, okay, so they wanted to know how
02:54:15 did you compare those fingerprints. Did you go to the
02:54:17 school and see if they had any fingerprints. Did the
02:54:19 Sheriff's Department have, did anyone have any
02:54:21 fingerprints that they could compare her fingerprints,
02:54:24 Heidi Allen's actual prints to the money that was on
02:54:26 the cash in the cash register, that was the question,
02:54:31 so I don't think there was any conclusion, and in fact,
02:54:33 Yerdon knew that there was a thumbprint because he said
02:54:35 I think there might have been a thumbprint, and do you
02:54:37 know who took that thumbprint? No, I do not. There

02:54:39 was no indication that there was an actual index card 02:54:42 with two thumbprints on it. I think it's significant, 02:54:45 Your Honor, I think it's indicative, but I guess my 02:54:47 position is the trial record below is part of this 02:54:51 record so the Court can make that decision, but we were 02:54:54 offering Mr. Dodd --

02:54:56 THE COURT: I can just review the trial 02:54:58 record.

02:54:58 MS. PEEBLES: You can review the trial 02:55:00 transcript, Judge, and you can make that determination 02:55:03 once you look at it, but I thought we were giving Mr. 02:55:05 Dodd a fair opportunity to recognize or acknowledge 02:55:08 that that was a line of questioning he took, but I 02:55:11 think to suggest that, you know, they wouldn't remember 02:55:14 when he's saying that they just got it in May, and that 02:55:17 somehow Attorney Fahey may have forgotten he had it, is 02:55:20 kind of a stretch.

02:55:21 THE COURT: But I think you can argue the 02:55:22 stretch both ways. Yes, Mr. Oakes, one last time.

02:55:25 MR. OAKES: And I wasn't saying that Attorney 02:55:28 Fahey forgot about that, it's the deputies who were 02:55:30 involved, but again, counsel's questioning the 02:55:34 testimony about investigators Yerdon and Kleist, both 02:55:37 whom are going to testify in this hearing. If counsel 02:55:40 has questions regarding the responses at the time of

02:55:42 trial, and why they gave that, you know, perhaps it's appropriate at that point, but I'm not sure it's appropriate to ask Mr. Dodd the basis for their response or why they gave answers they did.

02:55:53 THE COURT: Assuming Ms. Peebles or Ms. Bianco is going to say because they're not responsible for discovery.

02:55:58 MS. PEEBLES: I intend, counsel does intend to question those witnesses, and they are in fact on their list, but again, like I said, Mr. Dodd is the district attorney prosecuting the case, he's eliciting the information, the questions, he didn't know that there were fingerprints? He said he turned the stuff over. Even Mr. Dodd knew there were fingerprint cards. He has a date stamp that says he received that document from Kleist on May sixteenth.

02:56:25 THE COURT: I'm going to reserve. I want to look into the issue because the Court does have as part of its record right now as you indicated the trial testimony.

02:56:34 MS. PEEBLES: You have the trial testimony.

02:56:35 THE COURT: Correct, correct. Okay. Do we wait for Mr. Moody? We have to wait for Mr. Moody I'm assuming, right?

02:56:44 MR. OAKES: Yes, Your Honor.

02:56:46 THE COURT: How far is your office from the
02:56:48 Courthouse?

02:56:52 MR. OAKES: We're about two miles, Your Honor,
02:56:53 two or three miles.

02:56:55 THE COURT: Is he walking or driving? There
02:56:58 he is. Let me have a second. We had a conference.
02:57:07 Can I speak to Mr. Lyndaker for a second please?

02:57:29 (Whereupon, there was a pause in the
02:59:02 proceeding.)

02:59:02 THE COURT: Mr. Moody, are you ready? I'm
02:59:04 assuming since Mr. Dodd is going to be on for the rest
02:59:07 of the day, maybe not even finish this tomorrow,
02:59:10 court's going to reserve the decision about your
02:59:12 request until tomorrow, okay. Now in the meantime, if
02:59:15 the Court decides against you and looks at the trial
02:59:18 transcript, do you have page references?

02:59:22 MS. PEEBLES: Yes, I do.

02:59:23 THE COURT: Okay, thank you. Because that's a
02:59:25 thick trial transcript.

02:59:27 MS. PEEBLES: Yes, specifically.

02:59:29 THE COURT: Case move forward. Mr. Dodd,
02:59:31 subject to redirect by Mr. Moody, and then obviously
02:59:34 recross by Ms. Bianco.

02:59:39 MR. MOODY: Judge, I wasn't able to find the
02:59:41 answer. I was looking for the response. I know I have

02:59:42 it, I just couldn't lay my hands on it in the time I had unfortunately so I don't know how long I intend to be.

03:00:17 THE COURT: Mr. Dodd, consider you're still under oath. We now have a redirect by Mr. Moody.

03:00:21 THE WITNESS: Yes, sir.

03:01:23 (People's Exhibit UUU was marked for identification).

REDIRECT EXAMINATION

03:01:25 BY MR. MOODY:

03:01:25 **Q.** Mr. Dodd, I want to show you what's been marked as People's Exhibit UUU and ask you if you recognize that.

03:01:31 **A.** Yes, I do.

03:01:40 **Q.** And what is that?

03:01:41 **A.** What's commonly known as a file fifteen which is a New York State Police identification network systems inquiry. This particular one was relative to a Michael C. B-O-H-R-E-R with an associated date of birth, that the request date was 5/25, 1995. The request was submitted by the Investigator Terrence Whipple, Oswego County Sheriff's Department, and it has a response.

03:02:13 **Q.** Well, you -- it's a file fifteen?

03:02:16 **A.** Yes, it is.

03:02:16 **Q.** And a file fifteen would provide information on what with regards to a person?

03:02:22 **A.** Well, it's commonly known as a file fifteen. It's a criminal records check, and it would provide information to the requesting police agency, just a police agency, who has an O-R-I that would set forth any associated convictions that are in the system for the person who was inquired about.

03:02:38 **Q.** And you said this one is for Michael Bohrer. Does it have a date of birth on the person?

03:02:44 **A.** Michael C. Bohrer, date of birth zero-one one-zero five-six.

03:02:53 **Q.** Okay, and does this appear to be the original document?

03:03:01 **A.** Yes, it does.

03:03:05 MR. MOODY: Showing Exhibit UUU to defense counsel, I would move to admit.

03:03:19 MS. BIANCO: May I voir dire for a moment?

03:03:21 THE COURT: Sure.

03:03:30 VOIR DIRE EXAMINATION

03:03:31 BY MS. BIANCO:

03:03:32 **Q.** Was this just a criminal records check in just New York State?

03:03:36 **A.** A file fifteen request can be not only for New York State but any convictions that are reported through NCIC to the Federal Bureau of Investigation. It's not specifically limited to New York State only, criminal records check.

03:03:47 **Q.** So this one was a national check?

03:03:51 **A.** Can I look at it again please?

03:03:52 **Q.** Certainly.

03:03:59 **A.** Thank you. Yes, it was an NCIC interstate
03:04:14 identification check. That would be information obtained
03:04:17 from the Federal Bureau of Investigation in Washington,
03:04:20 D.C. associated with any reported arrests and convictions
03:04:24 for any individuals in the United States of America.
03:04:26 Specifically, this was an NCIC check.

03:04:29 **Q.** And there's no record on there about his Wisconsin
03:04:33 conviction for false imprisonment?

03:04:35 **A.** It indicates that there is no record of an arrest or
03:04:40 a conviction, there's no NCIC warrant which is a warrants
03:04:44 check. It shows that he has no prior arrests or
03:04:47 convictions reported to NCIC and no warrants outstanding.

03:04:51 **Q.** And just so I'm clear, just because not -- someone
03:04:55 didn't report something to NCIC doesn't necessarily mean
03:04:58 they don't have a criminal record, is that correct?

03:05:00 **A.** Absolutely correct. You can have a criminal record
03:05:03 in a jurisdiction. If for whatever the reason the entering
03:05:07 police agency, for example I'll pick on Florida, doesn't
03:05:11 enter the information into the national system, you can
03:05:15 only obtain from NCIC FBI Washington that which is entered
03:05:21 in, so if the arresting originating agency doesn't enter it
03:05:24 in, it won't show up.

03:05:26 MS. BIANCO: Thank you. I don't have any objection to that document.

03:05:34 THE COURT: UUU is in.

(People's Exhibit UUU was received in evidence).

03:05:35 BY MR. MOODY:

03:05:35 **Q.** And then just to be clear then, this does not 03:05:38 indicate -- you mentioned that it doesn't show 03:05:41 anything interstate. Does it show anything in New York?

03:05:43 **A.** No identifiable record in the NCIC interstate 03:05:47 identification index for name Bohrer, Michael, the 03:05:51 associated date of birth I indicated.

03:05:52 **Q.** Okay, and when was this again?

03:05:56 **A.** The request Investigator Whipple was 5/25, 1995.

03:06:13 **Q.** If you know, how was it that it came that -- that 03:06:22 Investigator Whipple on the twenty-fifth of May, 03:06:25 ninety-five, came to run a rap sheet on Michael Bohrer if 03:06:32 you know?

03:06:32 **A.** I don't have a -- I can tell you that as part of the 03:06:41 preparation for trial, that all witnesses that I intended 03:06:46 to call as part of the People's proof, it was my practice 03:06:50 to request of someone, whether it be someone from the DA's 03:06:55 Office or the Sheriff's Department, to run an NCIC check. 03:06:58 I -- I don't have a clear recollection as to the 03:07:01 circumstances under which Investigator Whipple ran the NCIC

03:07:07 check on that date, sir.
03:07:08 **Q.** Was Michael Bohrer going to be a witness for you?
03:07:10 **A.** No, he was not.
03:07:11 **Q.** Do you recollect a gentleman by the name of Michael
03:07:16 Bort being on the witness list?
03:07:20 **A.** I believe, yes, my best recollection is that Michael
03:07:25 Bort, name Michael Bort, was one of the witnesses
03:07:30 identified by Joseph Fahey in the witness list that he
03:07:34 provided to Judge Clary and myself.
03:07:37 **Q.** Showing you again Exhibit K, and just to be clear,
03:07:44 Exhibit double K, KK, is Michael Bort on that witness list?
03:07:50 MS. BIANCO: Is he saying B-O-R-T or Bohrer?
03:07:53 MR. MOODY: B-O-R-T.
03:07:54 THE COURT: B-O-R-T, on Exhibit K.
03:07:57 THE WITNESS: KK, Judge.
03:07:58 THE COURT: Yeah.
03:07:58 THE WITNESS: On KK, which is the witness list
03:08:02 of Attorney Joseph Fahey, the name Michael Bort,
03:08:06 B-O-R-T, Mexico, is identified.
03:08:10 **Q.** And after reviewing that, I show you something else
03:08:20 I need marked.
03:08:23 (People's Exhibit VVV was marked for
03:08:25 identification).
03:08:53 **Q.** Showing you Exhibit VVV, ask you if you recognize
03:09:00 that document.

03:09:01 **A.** I do.

03:09:03 **Q.** What is that?

03:09:04 **A.** This is also a file fifteen NCIC request submitted
03:09:14 by Investigator Terry Whipple, Oswego County Sheriff's
03:09:18 Department, for the person last name Bort, B-O-R-T, first
03:09:21 name Michael. The DOB identified here is zero-seven one-
03:09:26 two, 1969, and the date of this NCIC request by
03:09:30 Investigator Whipple was May twenty-five, 1995. This was a
03:09:35 criminal history check requested New York State, all
03:09:39 states, United States of America through NCIC.

03:09:45 **Q.** And after reviewing those two documents, does that
03:09:47 refresh your recollection?

03:09:48 **A.** It does.

03:09:49 **Q.** As to why Michael Bohrer's name was run?

03:09:51 **A.** Yes, it does.

03:09:52 **Q.** Why was that?

03:09:53 **A.** After I had received as part of the trial procedure
03:09:58 from Attorney Fahey his potential proposed witness list, I
03:10:02 would have specifically requested of either Investigator
03:10:05 Whipple or someone to run an NCIC criminal history check on
03:10:10 all of the persons that appeared on the defense witness
03:10:13 list to ascertain whether or not they had any prior
03:10:17 convictions in New York State or out of state.

03:10:20 **Q.** And to your recollection, does Michael Bohrer appear
03:10:24 on the Attorney Fahey's witness list?

03:10:26 **A.** Michael Bort?

03:10:27 **Q.** Bohrer, B-O-H-R-E-R.

03:10:30 **A.** Again --

03:10:31 **Q.** I'm showing you again Exhibit KK.

03:10:33 **A.** Looking at KK, no, Michael Bohrer, B-O-H-R-E-R does not appear. Michael Bort does appear. 03:10:40

03:10:42 **Q.** Okay, so -- so why then would Michael Bort's have been run on the same day as Michael Bohrer's, Bort, B-O-R-T and B-O-H-R-E-R. 03:10:45 03:10:49

03:10:53 **A.** That would have been Investigator Terry Whipple running a check, Michael Bohrer, because it was close to Michael Bort. 03:10:57 03:11:02

03:11:05 **Q.** Now --

03:11:07 **A.** By close I mean close in the spelling and such.

03:11:10 **Q.** Now you were asked some questions about Exhibit JJJ and LLL. I'm going to show you both of those documents. 03:11:32

03:11:39 **A.** Yes.

03:11:39 **Q.** You were asked a number of questions about which would have been the quote, unquote, original. Do you remember those questions? 03:11:43 03:11:46

03:11:47 **A.** Generally, yes.

03:11:48 **Q.** Now, focussing on JJJ, when you talk about original, JJJ has on its second page a document that appears very close to the second page, LLL, correct? There was a lot of discussion about that? 03:12:00 03:12:05 03:12:10

03:12:14 **A.** Yes, it does. The second page of LLL in the main is
03:12:30 an exact reproduction of the second page of received JJJ.

03:12:38 **Q.** And the difference is again between the second page
03:12:43 of JJJ and the second page of LLL is what again?

03:12:47 **A.** JJJ page two is the May twenty -- May sixteenth,
03:12:54 1995 handwritten supplemental police reports of OCSD
03:13:00 Investigator Kleist which has affixed to it the date
03:13:04 stamped received Oswego County District Attorney's Office
03:13:06 May sixteenth, 1995. Page two of LLL is the exact same
03:13:16 document I've just identified with some additional writings
03:13:19 or stamps affixed to it. An additional stamp is date
03:13:24 stamped Oswego County Sheriff's Department May
03:13:27 twenty-third, 1995 indicating it was received, and also
03:13:30 handwriting that I believe to be Investigator Whipple re:
03:13:34 OCSD evidence, R. Thibodeau, G. Thibodeau, Investigator
03:13:39 Kleist.

03:13:39 **Q.** And so there is a change to LLL, so could they --
03:13:45 and they both have the green marks on them, correct?

03:13:48 **A.** JJJ page two has a green mark on it on the top right
03:13:54 corner and LLL the top page has when I say green mark, the
03:14:03 green color ink appears on both, yes.

03:14:05 **Q.** Now, I want you to turn to the third page of LLL if
03:14:14 you would.

03:14:20 **A.** Yes, sir.

03:14:21 **Q.** What is on LLL, what is the third page of LLL?

03:14:26 **A.** Well, LLL is a photocopy of something commonly known as an evidence tag that would be affixed to an item of evidence whether it be a plastic bag or something else, and this particular photocopied evidence tag describes certain items of evidence that would have been contained within the bag itself, and it is recovered by OCSD Investigator Kleist.

03:14:54 **Q.** Okay, now, I want you to keep that page open if you would and I'm going to show you -- I'll take back JJJ. I'm going to show you what's been marked as People's Exhibit B as in boy. Do you recognize what that is?

03:15:10 **A.** Well, evidence B is a clear plastic bag, affixed to a clear plastic bag, appears to be an original evidence bag of Investigator Nick Kleist, Oswego County Sheriff's Department, describing items of physical evidence that would have been placed into the bag and sealed by Investigator Kleist indicating a date and time of recovery and also a date received by the Sheriff's Department.

03:15:38 **Q.** And if you were to compare that evidence tag to the third page of LLL, how do they compare?

03:15:46 **A.** Comparing third page LLL to the evidence tag that appears on the exterior plastic bag, People's B, as to the evidence tag, it appears to be an exact reproduction, so that LLL page three is an exact reproduction of the evidence tag that appeared on the exterior of Exhibit B.

03:16:14 **Q.** Now showing you, excuse me, additionally on Exhibit B, and this just fell off, Judge, but there is a single page, and I don't know if you can make that out, but it's a single yellow page. Can you read anything off that?

03:16:28 **A.** Well, I can read fairly clearly the date stamp received May twenty-third, 1995. I just -- I guess my eyes betray me a bit. I can see that there is writing. I can specifically see Heidi Allen's name, abduction, and other associated writings. I can see that.

03:16:56 **Q.** How does it compare to the second page as best you can to LLL?

03:17:20 **A.** Looking at the yellow document that was apparently in Exhibit B, and comparing the writing and specifically the incident number ninety-four three eight two nine and also certain things that I can read on this yellow piece of paper, when I compare that to LLL page three, LLL page three appears to be an exact reproduction of that which is the yellow piece of paper removed from Exhibit B with an exception there's some additional handwriting that appears on the page three of LLL.

03:18:07 **Q.** Okay, is the district attorney's date stamp on the attached piece of paper on Exhibit B?

03:18:14 **A.** It is not.

03:18:15 **Q.** Would you have an explanation for why that was because as we have established I believe, the first page of

03:18:22 Exhibit JJJ is the same as the second page of LLL except
03:18:30 those two date stamps are -- there's additional date stamps
03:18:34 and writing on LLL.

03:18:35 **A.** What this indicates is that Investigator Kleist was
03:18:39 being very, very thorough. What he did was two things. He
03:18:42 provided that -- a copy of that document to the District
03:18:47 Attorney's Office which was date stamped received May
03:18:48 sixteen, 1995 and he additionally --

03:18:55 MS. PEEBLES: I'm objecting to that, Your
03:18:57 Honor. First of all, he's testifying about the mindset
03:19:00 of -- of Officer Kleist.

03:19:04 THE COURT: I'll certainly disregard that
03:19:05 comment about Officer Kleist.

03:19:07 MS. PEEBLES: I don't think he can testify at
03:19:09 all about anything Mr. Kleist did unless he observed it
03:19:12 firsthand, and then to characterize him as being very
03:19:15 meticulous, I would ask that that be stricken as well.

03:19:18 THE COURT: That portion is stricken. Mr.
03:19:20 Moody, do you want to be heard with regard to the rest
03:19:22 of that objection?

03:19:23 MR. MOODY: Judge, I think he is able to -- to
03:19:25 determine on the basis of these documents which he's
03:19:28 testified he's familiar with that about the -- what he
03:19:32 believes happened, why the three documents are slightly
03:19:37 different in terms of how they were --

03:19:39 THE COURT: I don't think that was the
03:19:40 objection.

03:19:41 MS. PEEBLES: The objection is trying to
03:19:42 explain why Mr. Kleist did something. Mr. Kleist is
03:19:46 going to testify, so I suppose we could ask him when he
03:19:49 takes the stand. It's not appropriate for this
03:19:51 witness.

03:19:52 THE COURT: I'm going to sustain.

03:19:54 **Q.** Now, turning to QQQ -- I'll take those exhibits
03:20:09 back.

03:20:09 **A.** All right. This is -- I'm giving back to you then
03:20:12 LLL, that came out of LLL, and these documents came out of
03:20:23 B, and this -- this is Exhibit JJJ.

03:20:34 **Q.** And you have my paperclip?

03:20:37 **A.** And your paperclip.

03:20:41 **Q.** Showing you Exhibit QQQ, that is what is your work
03:20:47 copy I believe you described of the VanPatten, Anderson and
03:20:52 Montgomery reports, is that accurate?

03:20:55 **A.** Yes.

03:20:55 **Q.** What's the purpose of writing "Brady" on the top of
03:20:58 that?

03:20:59 **A.** My handwriting. It was clearly Brady material. I
03:21:05 wanted to make sure that this information contained in the
03:21:09 police reports of VanPatten and also Anderson and also
03:21:15 Montgomery first was identified by me as being Brady and

03:21:19 then thereafter to make sure that it would be turned over
03:21:22 to defense which my writing in my hand, I indicated carbon
03:21:29 copy turned over to both defense attorneys.

03:23:23 (Whereupon, there was an off the record
03:23:24 discussion).

03:24:13 THE COURT: We'll substitute Exhibit 3. The
03:24:15 current Exhibit 3 is going to be substituted in with
03:24:18 the consent of counsel.

03:24:19 MS. PEEBLES: Yes.

03:24:20 THE COURT: Vis a vis three that Mr. -- let's
03:24:40 mark that, and can we cross out the three on that one
03:24:44 so we don't get confused.

03:24:46 MS. PEEBLES: Yes.

03:25:37 (Defendant's Exhibit No. 3 was re-marked for
03:25:41 identification).

03:25:41 MR. MOODY: Also Judge, I'm going to show, I
03:25:41 neglected this earlier, this is Exhibit VVV which is
03:25:45 Michael Bort, the file fifteen on Michael Bort, and I'm
03:25:48 going to move to admit that.

03:25:51 MS. PEEBLES: Relevance?

03:25:52 MR. MOODY: I believe it explains -- it
03:25:54 combines with why Michael Bohrer was run.

03:25:57 MS. PEEBLES: What do we care?

03:25:59 THE COURT: Bohrer is in.

03:26:02 MR. MOODY: That's fine.

03:26:03 THE COURT: I'll sustain the objection.

03:26:08 **Q.** You were asked a number of questions about the
03:26:10 preliminary hearing regarding Gary Thibodeau. Do you
03:26:15 remember those questions?

03:26:16 **A.** Yes.

03:26:17 **Q.** And some of the questions were asked about why the
03:26:23 Grand Jury minutes apparently for Richard Thibodeau were
03:26:26 not disclosed or turned over. Do you remember those
03:26:28 questions?

03:26:29 **A.** Generally, yes.

03:26:30 **Q.** Okay, I want to show you what's been marked as now
03:26:34 as Exhibit 3 and turn to -- I want you to look at the
03:26:38 exhibit tabs that were listed as A and B and see if that
03:26:41 refreshes your recollection as to what the -- about the
03:26:44 Grand Jury minutes.

03:27:23 THE COURT: Mr. Moody, what tab is the
03:27:27 reference, A and B?

03:27:29 MR. MOODY: Pardon?

03:27:29 THE COURT: Nothing.

03:28:06 (Whereupon, there was a pause in the
03:28:28 proceeding.)

03:28:28 MR. OAKES: Your Honor, can I step out to
03:28:31 excuse the other witnesses we have because there is no
03:28:34 way we'll get to them.

03:28:35 THE COURT: Okay. 8:45 tomorrow.

03:28:37 MR. OAKES: Thank you, Your Honor.

03:28:47 MS. BIANCO: We're only going to noon?

03:28:49 THE COURT: Noon.

03:30:04 **A.** Yes. I reviewed tabs A and B.

03:30:07 **Q.** Does that refresh your recollection as to the disagreement over the Grand Jury minutes at Gary Thibodeau's preliminary hearing?

03:30:16 **A.** Well, it refreshes my recollection as to what it is that I said and did, yes.

03:30:21 **Q.** And what was the -- what was it that you did with regard to the Grand Jury minutes at the preliminary hearing?

03:30:29 **A.** The preliminary hearing for Gary Thibodeau was conducted in local town court, that prior to that, and this has been disclosed already, there was a Grand Jury presentation as it relates to Richard Thibodeau, that the Grand Jury transcript of the witnesses who had testified at the Grand Jury that voted true bill indictment as to Richard Thibodeau, that Grand Jury transcript had been requested by myself to be prepared, the then steno Judith Arduino, Arduine (ph), would not have been completed, but in addition, I opposed the disclosure of that form of information, and that properly was not authorized by the CPL Section 240.44 and CPL Section 240.45. 240.44 is a discovery statute associated with hearings after an

03:31:21 indictment has been filed and before the commencement of
03:31:25 trial. At the preliminary hearing stage associated with
03:31:28 Gary Thibodeau, there had been no indictment filed as it
03:31:32 relates to Gary Thibodeau. Therefore, CPL 240.44 which
03:31:38 mandates disclosure of prior witness testimony for the
03:31:42 purposes of a pretrial hearing didn't apply. There was no
03:31:45 indictment that had been voted against Gary Thibodeau.
03:31:48 Under CPL Section 240.45(1), if memory serves correctly,
03:31:53 that also didn't apply. That particular provision deals
03:31:58 with the requirement that the People disclose prior witness
03:32:02 statements which would include Grand Jury testimony after
03:32:06 an indictment had been filed and prior to the commencement
03:32:09 of trial and that witness being called, so I had opposed
03:32:13 the disclosure of the document, the information sought by
03:32:19 Attorney Fahey, first upon a practical ground, we didn't
03:32:22 have it, it was requested but it was not completed. But in
03:32:25 addition to that, the sections that were cited, CPL Section
03:32:32 240.44 and CPL Section 240.45 did not apply. There would
03:32:38 be no indictment voted.

03:32:39 **Q.** Now, so you made a dual argument, would that be fair
03:32:43 enough?

03:32:43 **A.** Triple argument I would think. We didn't have it,
03:32:48 and under those two sections it didn't apply.

03:32:50 MR. MOODY: Judge, at this time I'm going
03:32:52 to -- I have the -- there was some mention of a habeas

03:32:54 corpus petition that was issued, and I have the
03:32:57 decision that was made by Judge Nicholson on that
03:33:00 habeas corpus petition. I'd ask the Court to take
03:33:02 judicial notice of it simply because the motion that
03:33:05 was made by the defendant was denied.

03:33:07 THE COURT: Is Judge Nichols the judge that
03:33:09 heard --

03:33:11 MR. MOODY: Judge Nicholson is the judge that
03:33:13 heard the habeas corpus petition, yes.

03:33:15 THE COURT: Okay.

03:33:16 MR. MOODY: I don't know if you want to see
03:33:18 it.

03:33:19 MS. PEEBLES: It's part of the record below.
03:33:21 We don't have an objection, but we'd like an
03:33:23 opportunity to review the document, Judge, because we
03:33:26 haven't seen it.

03:33:28 THE COURT: Any objection to that, Mr. Moody?

03:33:30 MR. MOODY: No, I don't have any objection
03:33:32 they want to review it now.

03:33:32 MS. PEEBLES: Before cross-examination I'd
03:33:34 like an opportunity or Randi would like the
03:33:35 opportunity.

03:33:37 THE COURT: Do you want us to photocopy it
03:33:38 right now?

03:33:38 MS. PEEBLES: That would be good. That would

03:33:41 be great.

03:33:41 THE COURT: Amy, would you mind photocopy
03:33:44 that? Any objection to photocopying?

03:33:47 MR. OAKES: No.

03:33:48 THE WITNESS: Judge, can I stand?

03:33:50 THE COURT: You can stand to testify if you
03:34:01 want. Where is Judge Nichols out of?

03:34:03 MR. MOODY: Pardon me?

03:34:05 THE COURT: Where is Judge Nichols out of?

03:34:07 MR. MOODY: Judge Nicholson was a Supreme
03:34:08 Court Judge here in this county. It's Nicholson.

03:34:11 THE COURT: Nicholson.

03:34:12 MR. MOODY: If I said Nichols, I misspoke. I
03:34:15 apologize.

03:34:16 THE COURT: No, I probably -- do you need --

03:34:35 MR. MOODY: No, I don't need that, I was just
03:34:37 waiting.

03:34:58 **Q.** When the file was moved to the District Attorney's
03:35:01 Office, and I believe you said it was in the Grand Jury
03:35:03 room, who was responsible for that file at that time?

03:35:08 **A.** Investigator Terrence Whipple.

03:35:10 **Q.** And if you needed documents from that file, who
03:35:14 would you go to?

03:35:15 **A.** Investigator Terrence Whipple.

03:35:19 **Q.** And would he provide you with what then?

03:35:21 **A.** I -- if there were a particular document or item I needed to inspect or view, Terry would help me find it.

03:35:29 **Q.** And if the -- so in developing -- I assume at some point in time you had your own file full of documents, is that accurate?

03:35:41 **A.** I had work copies of certain portions of the Oswego County Sheriff's Department investigation report, yes.

03:35:49 **Q.** And would those have been for lack of a better term the originals out of the Oswego County Sheriff's Department file?

03:35:57 **A.** They were never the originals out of the Oswego County Sheriff's Department investigation report. It was always a reproduction, a photocopy of the original. The original would then be returned by me to Investigator Whipple for Investigator Whipple to place it into the appropriate portion of the file so that he knew where everything could be accessed. It was a huge file.

03:36:19 **Q.** Now, when -- was the file continuously maintained then in the or located in the Oswego County District Attorney's Office Grand Jury room after it was moved up there?

03:36:35 **A.** Yes. At some point when all matters were concluded at the end of both trials, it was moved back down to the Sheriff's Department, but yes.

03:36:47 **Q.** Now, you were asked some questions about the

03:36:53 documents that are -- JJJ we'll start with. Now that
03:37:14 document you would have -- you couldn't remember exactly
03:37:20 when the -- that document in relation to the trial was --
03:37:23 was given to Attorney Fahey, is that accurate?

03:37:26 **A.** Well, the JJJ, the cover sheet which is the DA's
03:37:31 letter by myself, is dated May seventeen, 1995. My best
03:37:35 recollection is it would have been immediately prior to the
03:37:38 commencement of jury selection, best recollection.

03:37:41 **Q.** If it was prior to the commencement of jury
03:37:44 selection, when you say immediately, would that have been
03:37:45 on the same day do you believe or do you not remember?

03:37:50 **A.** I -- no, I don't remember clearly when.

03:37:53 **Q.** If it was prior to the trial, would it have been
03:37:55 sent to Attorney Fahey through the mail?

03:37:59 **A.** Absolutely. It was -- well, there were times when I
03:38:05 would have hand-delivered to Attorney Fahey.

03:38:08 MS. PEEBLES: Objection because are we talking
03:38:10 about what he did with this specific document? I think
03:38:12 he was asking him a question about this document.

03:38:14 THE COURT: Yeah, this particular document,
03:38:17 correct.

03:38:17 **Q.** Do you remember whether this particular document was
03:38:19 mailed or hand-delivered?

03:38:20 **A.** Best recollection mailed.

03:38:22 **Q.** Now, you mentioned that SS has a cover letter on it

03:38:33 as well.

03:38:33 **A.** Yes.

03:38:34 **Q.** And SS as we've established would have been at some
03:38:38 point during the trial, is that accurate?

03:38:40 **A.** Yes.

03:38:40 **Q.** How would that have been given, that particular
03:38:43 document then been given to Attorney Fahey?

03:38:48 **A.** I would have hand-delivered it.

03:38:50 **Q.** Whereabouts?

03:38:51 **A.** Pardon?

03:38:52 **Q.** Whereabouts?

03:38:53 **A.** Hand-delivered it to the hands of Attorney Fahey.

03:38:56 **Q.** But I mean at his office or --

03:38:59 **A.** I'm sorry.

03:39:00 MS. PEEBLES: Well, Judge, I object because
03:39:01 does he remember hand-delivering it to Attorney Fahey
03:39:04 or is he saying he would have?

03:39:07 THE WITNESS: I remember delivering it to
03:39:08 Attorney Fahey. It was during the course of trial.
03:39:10 Because it was during the course of trial, I would not
03:39:13 have placed it in the mail, I would have hand-delivered
03:39:16 it to Attorney Fahey. This particular exhibit
03:39:18 designated if I can read SS dated 5/6, 1995, and it
03:39:24 would have been at the courthouse building.

03:39:36 **Q.** You were asked some questions about 1995 Exhibit 142

03:40:27 which is Attorney Walsh's motion and specifically the
03:40:32 paragraph that's on page eleven numbered or enumerated J or
03:40:36 numbered lettered J.

03:40:38 THE COURT: Page eleven.

03:40:39 THE WITNESS: Page eleven J.

03:40:40 MR. MOODY: Yeah, paragraph J on page eleven.

03:40:43 THE WITNESS: Yes, sir.

03:40:43 THE COURT: Hold on a second. Are you done
03:40:45 with those? Can I have those back?

03:40:47 MR. MOODY: I'm sorry, I'm doing that
03:40:49 constantly. I apologize, Judge.

03:41:02 THE COURT: It comes to me, that comes to me,
03:41:04 the judicial notice, that's mine.

03:41:07 MR. OAKES: Do you want to have this marked,
03:41:09 Your Honor, as a court exhibit?

03:41:10 THE COURT: Can I have this marked as a court
03:41:12 exhibit I guess one at this point? Any objection to
03:41:17 Court Exhibit 1 being marked?

03:41:19 MS. PEEBLES: No, not at all.

03:41:20 MR. MOODY: Are there other Court exhibits,
03:41:21 Your Honor?

03:41:21 THE COURT: I don't think so.

03:41:24 MR. MOODY: Is it Court Exhibit 1? I thought
03:41:26 we had other Court exhibits like the stipulations and
the --

03:42:25 (Court's Exhibit No. 3 was marked for
03:42:28 identification).

03:42:28 THE COURT: Go ahead, Mr. Moody. You're on
03:42:31 Exhibit 142.

03:42:32 MR. MOODY: Judge, before I get into this, I
03:42:34 have the -- with regard to Judge Walsh's -- that
03:42:37 motion, I know that I've seen the response and notes on
03:42:41 the response that were done specifically with the
03:42:45 investigation of the leads that was -- that were
03:42:47 referenced in Exhibit J. The problem is that in the
03:42:52 ten minutes that I or fifteen minutes that I had, I
03:42:55 couldn't find it, and I have -- because I didn't
03:43:00 anticipate it being needed here.

03:43:02 THE COURT: So what are you asking?

03:43:03 MR. MOODY: What I'm asking is I have -- I
03:43:06 don't have much more to go on redirect other than that
03:43:08 response. If he's coming back tomorrow, what I'd like
03:43:11 to do is be able to -- to start up with him tomorrow on
03:43:14 that topic.

03:43:15 MS. PEEBLES: If you want to adjourn right
03:43:17 now, that's fine with us. We can start tomorrow
03:43:19 morning.

03:43:19 THE COURT: 8:45, that will give Ms. Bianco --
03:43:21 hold on, sir. Ms. Bianco have more time to review that
03:43:25 as well yes, sir.

03:43:25 THE WITNESS: Judge, I have a personal and
03:43:26 private matter I need to address to the Court and
03:43:30 counsel in chambers or somewhere privately on the issue
03:43:32 of my availability tomorrow morning if I can do that.

03:43:35 THE COURT: Any problem with that?

03:43:36 MS. PEEBLES: No.

03:43:37 MS. BIANCO: No.

03:43:37 THE COURT: Let's go in chambers.

03:43:40 THE WITNESS: Thank you.

03:43:58 THE COURT: We'll adjourn this matter till
03:43:59 8:45 tomorrow. We'll decide which witness comes up.
03:44:03 We don't need to go back on the record.

03:44:05 MR. OAKES: I don't believe so.

(Conclusion of Proceeding).

* * *

C E R T I F I C A T E

I, JENNIFER ADYDAN, an Official Court Reporter in and for the State of New York, Fifth Judicial District, do hereby certify that the foregoing is a true, complete and accurate transcript of my stenographic notes taken in the above-entitled matter and the whole thereof to the best of my ability.

Jennifer Adydan

Jennifer Adydan
Official Court Reporter

DATED: March 31, 2015

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF OSWEGO: CRIMINAL TERM:

---------------------------------------x

THE PEOPLE OF THE STATE OF NEW YORK

Indict. No.
94C-0161

- against-

HEARING
VOLUME 11

GARY THIBODEAU,

Defendant.

---------------------------------------x

Oswego County Courthouse
25 E. Oneida Street
Oswego, NY 13126

DATE: March 26, 2015

Before:

HONORABLE DANIEL R. KING
Acting County Court Judge

Appearances:

GREGORY S. OAKES, ESQ.
District Attorney, Oswego County
MARK M. MOODY, ESQ.
Chief Assistant District Attorney

OFFICE OF THE FEDERAL PUBLIC DEFENDER
BY: LISA PEEBLES, ESQ., Public Defender
RANDI JUDA BIANCO, ESQ., Assistant Public Defender
Attorneys for Defendant

Defendant is not present

08:24:58

INDEX TO WITNESSES

	Direct	Cross	Redirect	Recross
FOR THE PEOPLE:				
Kristine Duell	1875	1888	1907	--
John Cox	1909	1916	--	--
Christopher VanPatten	1922	1942	1957/1969	1965
Michael Anderson	1970	1981	1991	--
Michael Montgomery	1993	2001	--	--
FOR THE DEFENDANT:				
None				

INDEX TO EXHIBITS

	Identification	Evidence
FOR THE PEOPLE:		
UU. Gas station photo	992	1885
FOR THE DEFENDANT:		
162. Duell recorded interview	--	1916

08:46:43 THE COURT: Just to put on the record what we discussed last afternoon, yesterday afternoon, all parties agree that continued cross-examination, recross-examination, excuse me, of Mr. Dodd will be delayed until Friday due to a prior commitment that Mr. Dodd has today. Is that agreed?

08:47:00 MS. BIANCO: Yes.

08:47:00 THE COURT: He'll -- he's going to be calendared for first thing tomorrow morning at eight forty-five unless we hear differently, correct?

08:47:07 MR. MOODY: Yes, Judge.

08:47:08 THE COURT: Next witness?

08:47:09 MR. MOODY: Judge the people would call Kristine Duell. Kristine Duell. Judge, before the witness comes in actually there is one other thing. She can come in. We may need to add a witness to our witness list, Roberta Wills.

08:47:43 THE COURT: Have you discussed this with defense?

08:47:45 MR. MOODY: I hadn't mentioned it. She's Kristine's mother.

08:47:49 THE COURT: That will not be a problem?

08:47:51 MS. PEEBLES: (Shakes head.)

08:47:52 THE CLERK: Raise your right hand, put your left on the Bible.

KRISTINE DUELL, Called as a witness, having
08:47:57 been duly sworn, was examined and testified as follows:

08:47:57 THE CLERK: Please state your name for the
08:48:03 record.

08:48:03 THE WITNESS: Kristine Duell.

08:48:05 THE CLERK: Spell your first name.

08:48:06 THE WITNESS: K-R-I-S-T-I-N-E.

08:48:09 THE CLERK: And your last name.

08:48:10 THE WITNESS: D U E L L.

08:48:14 THE COURT: Ms. Duell, before any questions
08:48:17 are posed to you, do you mind or do you consent to
08:48:20 having your testimony videotaped and audio taped?

08:48:22 THE WITNESS: No, I do not want them taped or
08:48:24 audio taped.

08:48:25 THE COURT: Thank you. Mr. Moody?

08:48:31 MR. MOODY: Thank you, Judge.

08:48:36 THE COURT: Sir, cameras off. She did not
08:48:37 consent.

08:48:40 UNIDENTIFIED PERSON: Oh, sorry.

08:48:42 MR. MOODY: Judge, can I get the mike too?

08:48:44 THE COURT: Excuse me?

08:48:45 MR. MOODY: The mike.

08:49:05 DIRECT EXAMINATION

08:49:06 BY MR. MOODY:

08:49:07 **Q.** Good morning, Ms. Duell.

08:49:19 A. Good morning.

08:49:21 Q. Do you have any knowledge of the store that used to be known as the D & W?

08:49:26 A. Yes, I do.

08:49:26 Q. How do you know about the D & W?

08:49:28 A. I was one of the owners.

08:49:30 Q. How long were you one of the owners?

08:49:33 A. Since they built it. I can't remember exactly how many years we had it.

08:49:38 Q. Okay, and when you say "we," who else?

08:49:40 A. My husband, my mother, my father and my husband's mother.

08:49:44 Q. Okay, and you say you used to be the owner. When did you get rid of it? When did you sell or -- or stop being the owner?

08:49:52 A. We leased it for seven years and then sold it at the end of the seven-year term. That was probably back in probably like 2002 maybe.

08:50:11 Q. Well, let me ask it to you this way. Would you have -- would you have been the owner and running the store from say 1991 to 1994?

08:50:19 A. Yes.

08:50:20 Q. Besides being the owner did you often or sometimes work there?

08:50:25 A. Yes, most the time daily.

08:50:28 Q. Do you know someone by the name of Heidi Allen?

08:50:32 A. Yes.

08:50:32 Q. How do you know Heidi Allen?

08:50:34 A. She was an employee and was a friend of the family.

08:50:38 Q. And how -- did she ever work at the D & W?

08:50:44 A. Yes, she did.

08:50:45 Q. For how long?

08:50:46 A. A few years.

08:50:46 Q. And at some point in time did you become aware of an
08:50:51 incident involving Heidi that occurred at the store?

08:50:54 A. Yes.

08:50:55 Q. And when did that occur if you remember?

08:50:57 A. April third, 1994.

08:51:01 Q. I want to take you back to January of 1992. Would
08:51:06 you have been working at the store at some point during
08:51:08 that time?

08:51:09 A. Yes.

08:51:09 Q. And at some point while you were working at the
08:51:13 store, and did you have any occasion to find or -- or find
08:51:18 some paperwork that you eventually turned over to the
08:51:20 Sheriff's Department?

08:51:21 A. Yes.

08:51:21 MS. PEEBLES: Objection, leading.

08:51:23 THE COURT: I'll allow it.

08:51:24 Q. Do you know when that happened specifically?

08:51:27 A. I don't.

08:51:28 Q. Can you tell us about what happened?

08:51:30 A. I had went out to pick up the parking lot. We get debris and -- and garbage, so I went out to pick it up and clean it up and found some papers laying in the driveway itself of the store.

08:51:46 Q. Had -- and did you look at the papers?

08:51:49 A. I did.

08:51:50 Q. Okay, and did you make any observations about who they might have belonged to?

08:51:54 A. I did.

08:51:55 Q. Why was that?

08:51:56 A. Because I seen one of my employees which was Heidi's name on the card itself.

08:52:01 Q. Okay, and what -- in response to finding this what did you do?

08:52:07 A. The only thing I did was I kept it on my person. I then discussed it with my mother.

08:52:14 Q. What's your mother's name?

08:52:15 A. Roberta Wills.

08:52:17 Q. You say you discussed it with your mother. Then what did you do?

08:52:21 A. We decided that we would not make it known to anyone else that, you know, I found this card, thinking that it may be some type of sensitive material, so I ended up

08:52:30 calling the -- down at the Sheriff's Office and somebody
08:52:34 came out and picked it up.

08:52:35 **Q.** Now, do you remember whether you found this, the
08:52:38 card, during the day or during the night?

08:52:41 **A.** I can't remember.

08:52:41 **Q.** You know obviously on April third, ninety-four Heidi
08:52:46 Allen disappeared.

08:52:47 **A.** Um hum.

08:52:47 **Q.** Do you know whether you found it before or after
08:52:50 Heidi disappeared?

08:52:51 **A.** I'd be guessing to say it for sure. I believe it
08:52:55 was well before, but I can't say that for certain.

08:52:59 **Q.** Well, let me ask you this. Did you ever find any --
08:53:01 any other paperwork or any other material that you turned
08:53:04 over to the Sheriff's Department during the time that you
08:53:06 owned the store?

08:53:06 **A.** No.

08:53:07 **Q.** Now, you said you called the Sheriff's Department.

08:53:11 **A.** Um hum.

08:53:11 **Q.** Okay, did you know anybody from either working in
08:53:16 the store or -- or in your personal life who worked with
08:53:19 the Sheriff's Department?

08:53:23 **A.** Say that again.

08:53:23 **Q.** Let me ask you this. That was a poorly worded
08:53:27 question. Did -- did occasionally while you were working

08:53:30 at the store members of the Sheriff's Department stop by?

08:53:32 **A.** Yes.

08:53:32 **Q.** Did you know a deputy or an officer by the name of 08:53:36 Chris VanPatten?

08:53:37 **A.** Yes.

08:53:38 **Q.** Around the time that you found the items, did Deputy 08:53:42 VanPatten -- was he there at the store?

08:53:43 **A.** Yes.

08:53:43 **Q.** How -- how much -- how close in relation if you 08:53:48 remember?

08:53:48 **A.** I don't remember because I can't tell you exactly 08:53:51 when I found the actual card like time of day or anything. 08:53:55 We just with my discussion with my mother had come to the 08:54:01 fact that we believe that it may be Chris VanPatten 'cause 08:54:05 he had been the last officer in the store that we could 08:54:09 remember.

08:54:09 **Q.** Okay, and after you called the Sheriff's Department, 08:54:12 did someone come, come to the store?

08:54:14 **A.** Yes.

08:54:15 **Q.** Did you know that officer?

08:54:16 **A.** I don't remember who it was at this point.

08:54:18 **Q.** And what did you do? Was it a deputy?

08:54:21 **A.** I believe so. A deputy or maybe a higher up, I'm 08:54:26 not real sure.

08:54:27 **Q.** But it was somebody from the Sheriff's Department?

08:54:29 **A.** Correct.

08:54:29 **Q.** Okay, and did you -- did you turn the card over to them?

08:54:36 **A.** Yes.

08:54:37 **Q.** And did you ever see the card again after that?

08:54:39 **A.** No.

08:54:40 **Q.** Now you mentioned that you and your mother had a discussion and you decided not to tell anyone about it.

08:54:45 **A.** Um hum.

08:54:46 **Q.** Did you ever tell anyone about it?

08:54:48 **A.** No.

08:54:48 **Q.** Did that include even after Heidi disappeared?

08:54:52 **A.** That I'm uncertain. I don't believe that it came up at all, not even after the fact. I didn't really relate one to the other because it was not discussed.

08:55:05 **Q.** I want to show you what's been marked as People's Exhibit B. It's a bag full of evidence. I want to ask if you can look through that.

08:55:50 **A.** Okay.

08:55:50 **Q.** Do any of the items that are in Exhibit B match what you recollect finding on the -- in the parking lot of the D & W?

08:56:00 **A.** I believe just one that I can remember.

08:56:04 **Q.** Okay, and could you show that to me please?

08:56:07 **A.** (Handing).

08:56:08 MR. MOODY: Just for the record, Judge, she's pointing out just to the index card that has Ms. Allen's name on it and -- and the fingerprints on the back.

08:56:17 THE COURT: Defense want to see that?

08:56:19 MS. PEEBLES: That's fine.

08:56:20 THE COURT: Okay.

08:56:21 **Q.** The other items in there, you don't -- do you recognize any of those other items in there?

08:56:25 **A.** Yes. I recognize this, this is my writing, and that's the list of people we saved Sunday papers for, so in order to figure out what sales were on the register for that morning, that was the best way to be able to come up with all those sales.

08:56:41 **Q.** And when you say that morning, which morning do you mean?

08:56:43 **A.** The morning Heidi disappeared.

08:56:44 **Q.** April third of ninety-four?

08:56:46 **A.** Correct.

08:56:46 **Q.** Anything else that you recognize from there?

08:56:50 **A.** I recognize the picture, but I've seen that picture before at Ken and Sue's home.

08:56:55 **Q.** Okay.

08:56:57 **A.** And then this is just a receipt of stuff we used to write up.

08:57:01 Q. Now with regard to the picture, do you remember whether you found that material in the store?

08:57:05 A. No, I don't believe that was with the -- with the card.

08:57:09 Q. And apparently there was some stuff that got stuck in one of these items, and I don't know, did you see these things before when you were looking through it? They got stuck in the planner apparently?

08:57:32 A. I believe this was also with that card.

08:57:34 Q. Okay, so this is -- just to be clear then, this material here when you say was with the card, we're talking about some handwritten things on an index card?

08:57:44 A. Correct.

08:57:45 Q. With the card as well? Were they somehow attached to each other?

08:57:48 A. I believe they were either stapled, somehow they were kind of stuck together. I don't know if it was 'cause it was wet or I don't remember that part but I remember having to move them aside.

08:58:01 Q. When you say that it was wet, what was the condition of the parking lot when you went out to look at it?

08:58:07 A. Wet due to just -- it wasn't like two feet of snow, nothing like that, it was just wet because of the time of year. I was able to actually clean up stuff out of the parking lot somewhat, and I wouldn't do that if there was

08:58:22 tons of snow so.
08:58:24 **Q.** Now you mentioned the time of year. Do you remember
08:58:26 what time of year you -- you found this?
08:58:28 **A.** I'd be guessing.
08:58:31 **Q.** We don't want you to do that. Now you said you kept
08:58:38 it on your person. Did you show it to your mother?
08:58:42 **A.** I did not physically show it to my mother. I just
08:58:44 had discussed with her what I had found.
08:58:47 **Q.** And now you mentioned that you owned the store in
08:58:54 Easter of ninety-four, you and your husband and the rest of
08:58:58 your family.
08:58:59 **A.** Correct.
08:58:59 **Q.** On Easter morning in ninety-four did you go to the
08:59:02 store?
08:59:02 **A.** Yes.
08:59:03 **Q.** How did that come about just briefly?
08:59:04 **A.** My husband and I were sleeping, and we got a phone
08:59:07 call at our home explaining that the store was empty and
08:59:11 unlocked, asking who worked. My husband had answered the
08:59:16 phone, so he then asked me who is supposed to be working
08:59:19 because I was in charge of the scheduling. I explained
08:59:21 that that was Heidi. We were told the store was empty, she
08:59:26 was not there, and we immediately grabbed our daughter,
08:59:30 made three calls and got to the store because we only live
08:59:34 two miles from the store.

08:59:35 Q. I want to show you what's been marked as People's UU. I'm going to ask you if you recognize that.

08:59:42 A. Yes. That's our store.

08:59:44 Q. Okay, and do you know if that's the store, how it looked on Easter morning in ninety-four?

08:59:49 A. That is Easter morning.

08:59:51 Q. Okay, how do you know that?

08:59:52 A. Well, I remember standing out with Lisa, my mother and my father.

08:59:58 Q. And Lisa would be who?

09:00:00 A. Heidi's sister, and of course the police tape was up there and that was never done other than that morning.

09:00:06 Q. Okay, and does it fully and fairly and accurately represent that -- the store and the surrounding things as you remember it from Easter morning in ninety-four?

09:00:16 A. Exactly, yes.

09:00:18 MR. MOODY: Judge, showing Exhibit UU to defense counsel, I would move to admit.

09:00:30 MS. PEEBLES: No objection.

09:00:34 THE COURT: UU is in without objection.

09:00:36 MS. PEEBLES: Well -- yeah, no objection.

(People's Exhibit UU was received in evidence). 09:00:39

09:00:39 Q. Now as you look at Exhibit UU, you said this would have been the morning Heidi disappeared? 09:00:46

09:00:48 **A.** Yes.
09:00:48 **Q.** And when you look at that picture, is there any snow
09:00:53 on the ground?
09:00:54 **A.** No, there wasn't any snow.
09:00:55 **Q.** When you showed up?
09:00:56 **A.** Correct.
09:00:57 **Q.** Did it snow later that day?
09:00:59 **A.** It did. It kind of got sleety and then turned to
09:01:04 snow so we actually got, you know, quite a bit later on.
09:01:06 **Q.** When you say quite a bit later on, are you talking
09:01:09 hours or -- or minutes or --
09:01:11 **A.** No, it was awhile after we had been at the store
09:01:15 before any snow had fallen.
09:01:16 **Q.** Do you have any recollection how long after the
09:01:19 store?
09:01:21 **A.** Well, I was there for most of that day helping them
09:01:26 figure out sales and looking through the store and going
09:01:31 over everything, so I would say a couple hours if I --
09:01:35 memory serves.
09:01:36 **Q.** And was there a significant amount of snow like more
09:01:39 than two or three inches if you remember?
09:01:42 **A.** I would say from what I remember it was a few inches
09:01:48 of snow.
09:02:34 MR. MOODY: I have no further questions,
09:02:37 Judge.

09:02:37 THE COURT: Ms. Peebles?

09:02:38 MS. PEEBLES: Yes.

09:02:42 MR. OAKES: Actually, Your Honor --

09:02:45 MR. MOODY: Hold on one second.

09:02:47 THE COURT: That's all right.

09:03:08 **Q.** Just to be clarified that DA Oakes brings up a good
09:03:14 point, at the time you found the card do you remember
09:03:15 whether Heidi was working for you?

09:03:17 **A.** She was working for me.

Q. She was working?

09:03:18 **A.** I do believe so.

09:03:19 **Q.** Do you remember to your knowledge whether or not
09:03:22 there were -- between the time that you found the card
09:03:24 or -- and if Heidi -- when Heidi disappeared if it was
09:03:28 before Heidi disappeared?

09:03:29 MS. PEEBLES: Objection. She already said she
09:03:30 didn't remember.

09:03:30 THE COURT: I'm not sure I heard the question.

09:03:34 MR. MOODY: I'll with -- I'll rephrase.

09:03:37 THE COURT: Okay.

09:03:37 **Q.** While Heidi was working for you, to your knowledge
09:03:42 was there any kind of problems with the store with any kind
09:03:45 of harassment about Heidi from customers or anything like
09:03:48 that that you're aware of?

09:03:49 MS. PEEBLES: Objection, leading.

09:03:50 THE COURT: Sustained.

09:03:51 Q. During the time that Heidi worked in the store, did you -- to your knowledge, were there ever any problems in the store?

09:04:02 A. No.

09:04:03 Q. Involving Heidi specifically?

09:04:05 A. No.

09:04:06 MR. MOODY: No further questions, Judge.

09:04:07 THE COURT: Ms. Peebles?

09:04:11 CROSS-EXAMINATION

09:04:12 BY MS. PEEBLES:

09:04:30 Q. Now Ms. Duell, you -- you also managed the store and the employees when you were -- when you owned it or co-owned it back in 1994, correct?

09:04:47 A. Correct.

09:04:48 Q. And you actually were the one that hired Heidi Allen to work for you at the D & W?

09:04:53 A. Correct.

09:04:54 Q. And she was a friend of yours?

09:04:55 A. Correct.

09:04:56 Q. Consider her a friend? And you actually knew her for about eight or nine years prior to hiring her?

09:05:01 A. At least.

09:05:02 Q. Now, you talked to her about other things aside from just what was happening inside D & W as an employee,

09:05:08 correct?

09:05:08 **A.** Um hum.

09:05:09 **Q.** Now, Heidi was scheduled to work that morning,
09:05:15 Easter morning of April third of 1994, correct?

09:05:19 **A.** Secondly, yes, she was. It was supposed to be
09:05:23 originally someone else, and they switched their schedule
09:05:26 due to the other woman's job.

09:05:29 **Q.** And she was actually on the schedule, correct?

09:05:33 **A.** Changed and put on the schedule, correct.

09:05:35 **Q.** Right. So she was actually put on the schedule for
09:05:37 that morning.

09:05:38 **A.** Yes.

09:05:38 **Q.** Prior to April third of 1994, correct?

09:05:41 **A.** Yes.

09:05:41 MS. PEEBLES: Excuse me one minute. Do you
09:05:48 have UU, the photograph inside the store?

09:05:51 MR. MOODY: Oh, it's up there.

09:06:05 **Q.** Now, there was some type of corkboard that you had
09:06:12 inside the store which hung the schedule for the employees?

09:06:14 **A.** Yes.

09:06:14 **Q.** Correct? I'm going to hand you what's been received
09:06:18 into evidence as people's exhibit what is it?

09:06:23 MR. MOODY: It's UU. The other two are from
09:06:27 the other two trials.

09:06:29 **Q.** SSS and ask you to take a look at that document. Do

09:06:34 you see the corkboard in that picture depicted in that photograph?

09:06:37 A. Yes.

09:06:38 Q. And can you -- can you explain where it is in that photograph?

09:06:42 A. It's a little over halfway -- well, it's about a quarter of the way down the corkboard itself.

09:06:53 Q. Okay, so when you're walking inside the D & W, the corkboard would be on what side of the wall, what wall?

09:07:00 A. Your left.

09:07:02 Q. So as you're walking in, you would see the corkboard hanging on the wall, correct?

09:07:07 A. Yes. You'd have to be pretty close, you know, right up to the counter.

09:07:10 Q. Right, and is there a gentleman depicted in that photograph or --

09:07:15 A. Yes.

09:07:16 Q. Do you see that in there?

09:07:18 A. Yes.

09:07:18 Q. And the corkboard is right behind him in that picture?

09:07:23 A. Well, he's --

09:07:23 Q. Or off to the right. It's off to the right.

09:07:24 A. It's in front of him and off to the right.

09:07:27 Q. Right, okay. Now, and that's where you hung the

09:07:29 schedule?
09:07:29 **A.** Yes.
09:07:30 **Q.** Now, you talked about regular customers that would
09:07:36 come in when you were, you know, managing and working at
09:07:39 the D & W, do you remember that?
09:07:40 **A.** Correct.
09:07:40 **Q.** And there were many customers that would come in
09:07:43 that -- on a regular basis, and you knew who those
09:07:45 customers were, correct?
09:07:47 **A.** Yes.
09:07:47 **Q.** I want to ask you about an individual by the name of
09:07:49 Michael Bohrer. Do you know Michael Bohrer?
09:07:52 **A.** I do not.
09:07:53 **Q.** You never spoke to Michael Bohrer at all?
09:07:56 **A.** I do not know.
09:07:58 MR. MOODY: She just said she didn't know him.
09:08:00 THE WITNESS: Who he is.
09:08:02 THE COURT: It's a different question. I
09:08:03 guess the question -- I'll allow the answer.
09:08:05 **Q.** Now, I want to ask you about the first time anyone
09:08:10 ever talked to you about finding that index card in the
09:08:14 parking lot, do you understand?
09:08:16 **A.** Yes.
09:08:17 **Q.** Now, is it fair to say that the first time anyone
09:08:20 interviewed you about finding that index card was in

09:08:23 January of 2015, specifically January twenty-second of this
09:08:28 year, is that fair to say?

09:08:29 **A.** No.

09:08:30 **Q.** Can you please tell me when the first time is that
09:08:33 you ever talked to anybody other than calling the 911 about
09:08:37 coming to pick the card up. Were you ever interviewed by
09:08:40 anyone from the Sheriff's Department about finding that
09:08:42 index card in the parking lot?

09:08:44 MR. MOODY: Objection. I don't believe she
09:08:45 said she called 911.

09:08:46 MS. PEEBLES: Well --

09:08:46 THE WITNESS: I did not.

09:08:47 MS. PEEBLES: She called --

09:08:48 THE COURT: Called the Sheriff's Department.

MS. PEEBLES: The sheriff.

09:08:50 THE COURT: That's fine. Called the Sheriff's
09:08:52 Department.

09:08:52 **A.** When they came to pick up the card, I was asked
09:08:55 about the card itself and what -- how exactly I found it
09:09:00 and what happened.

09:09:01 **Q.** Did you give a written statement?

09:09:05 **A.** I can't remember.

09:09:06 **Q.** Do you remember who picked that index card up at the
09:09:12 store?

09:09:12 **A.** I do not.

09:09:13 **Q.** You have no recollection about that whatsoever?

09:09:15 **A.** I do not.

09:09:15 **Q.** Now, you felt when you found that card that that was
09:09:20 sensitive information, fair to say?

09:09:22 **A.** Correct.

09:09:23 **Q.** And if you found a business card lying in the
09:09:28 parking lot with no name on it, would you have called the
09:09:31 Sheriff's Department to tell them to come and pick it up?

09:09:33 **A.** No.

09:09:33 **Q.** That wouldn't make any sense would it?

09:09:37 MR. MOODY: Objection, Judge, speculation.

09:09:39 THE COURT: I'll allow it.

09:09:43 **A.** Can you repeat the question?

09:09:46 **Q.** That wouldn't have made any sense to call the
09:09:48 Sheriff's Department if you just found a business card
09:09:50 lying in the parking lot with no name on it.

09:09:52 **A.** Correct.

09:09:53 **Q.** Now, you don't recall ever giving a written
09:10:08 statement about finding that index card after Heidi Allen
09:10:13 was abducted.

09:10:14 **A.** I do not remember.

09:10:15 MR. MOODY: Objection. Asked and answered.

09:10:16 THE COURT: Sustained.

09:10:17 MS. PEEBLES: It was a different time period.

09:10:19 THE COURT: It was an open-ended question

09:10:21 before. I'm sustaining the objection.

09:10:22 Q. I'm going to ask you specifically about what you
09:10:26 told Investigators Pietroski and Bucher when they came to
09:10:32 interview you in January of this past year. Do you
09:10:35 understand?

09:10:35 A. I don't remember who picked the card up so I don't
09:10:40 recall that that was who I spoke to.

09:10:41 Q. I'm talking about January of this past year, do you
09:10:45 remember the two officers that you spoke to?

09:10:47 A. Yes, I do.

09:10:48 Q. All right, so this is 2015, and you were recently
09:10:51 interviewed in January, do you understand that?

09:10:53 A. Correct.

09:10:53 Q. Now you were aware that these proceedings were
09:10:56 taking place during that time period?

09:10:57 A. Yes.

09:10:58 Q. Were you not? All right, and you were aware that
09:11:02 the fact that this index card and who found it came up
09:11:06 during these proceedings, are you aware of that?

09:11:07 A. Yes.

09:11:08 Q. And you're aware of the fact that it was Michael
09:11:12 Bohrer who gave us the revelation that you were the one
09:11:14 that found the card in the parking lot.

09:11:16 MR. MOODY: I'm going to object to the
09:11:18 revelation of who gave us the revelation. I don't

09:11:21 believe that that was --

09:11:22 THE COURT: Sustained.

09:11:23 **Q.** Did you know Michael Bohrer testified that you were 09:11:26 the one that found the index card in the parking lot at the 09:11:29 D & W?

09:11:30 **A.** No, I did not.

09:11:32 **Q.** And you're saying you never spoke or you didn't even 09:11:36 know Michael Bohrer?

09:11:37 **A.** I do --

09:11:40 MR. MOODY: Objection. Asked and answered.

09:11:42 THE COURT: Sustained.

09:11:42 **Q.** Now when you were questioned by investigators this 09:11:45 past year, you signed a sworn statement, do you remember 09:11:47 that?

09:11:47 **A.** Yes.

09:11:47 **Q.** You wrote it out yourself?

09:11:49 **A.** Yes.

09:11:49 **Q.** And you told investigators that it was summertime 09:11:55 out, maybe the summer of 1993 'cause you were sweeping the 09:11:59 parking lot, do you remember that?

09:12:00 **A.** I did not say that it was summer. I said I know 09:12:04 that I was sweeping the parking lot. I don't recall saying 09:12:07 it was actually in the summer. I remember saying I was 09:12:10 guessing at the time frame but, it couldn't have been too 09:12:14 much snow because I went out to pick up and sweep up the

09:12:16 parking lot.

09:12:17 **Q.** You didn't say anything about snow when those
09:12:20 investigators were talking to you in January of 2015, isn't
09:12:24 that true?

09:12:24 **A.** No, it's not true.

09:12:26 **Q.** It's not true?

09:12:27 **A.** No.

09:12:27 **Q.** What if I provide you with the transcript of the
09:12:29 audio recorded interview of you and let you read through
09:12:33 it, perhaps then you would have a better understanding or
09:12:37 remember --

09:12:37 **A.** Sure.

09:12:37 **Q.** -- what you said.

09:12:38 **A.** Sure.

09:12:43 THE COURT: Can you point to a particular area
09:12:44 or not?

09:12:45 MS. PEEBLES: Yeah, there is a -- I mean I
09:12:49 want her to see the whole thing so she realizes she
09:12:52 never said anything about snow.

09:12:54 THE WITNESS: No, I don't remember.

09:12:57 THE COURT: How many pages is that, Ms.
09:12:59 Peebles?

09:12:59 MS. PEEBLES: It's fairly long.

(Whereupon, there was a pause in the
09:14:09 proceeding).

09:14:09 **A.** How much am I reading?

09:14:10 **Q.** Pardon me?

09:14:11 **A.** How much do you --

09:14:12 **Q.** Well, you indicated that you may have said something about snow, and I want -- I want to refresh your recollection about whether or not you mentioned the word snow.

09:14:20 **A.** I have not seen the word snow, but I also did not say it was the summer. I said it was at least the summer of ninety-three.

09:14:28 **Q.** And you said it was nice out.

09:14:30 **A.** Yes, it was nice out or I would not have been out sweeping the parking lot, but that does not mean that there was no snow.

09:14:37 **Q.** Well, would it surprise you to know that it was fifteen degrees with two inches of snow on the ground on January twenty-third of 1992?

09:14:46 **A.** Two inches would not be the case in the parking lot due to the cars and everyone coming in and out. It still could be bare.

09:14:53 **Q.** So you typically will sweep the parking lot in the wintertime when there's snow on the ground and it's fifteen degrees?

09:15:00 MR. MOODY: Objection, Judge, I think typically, and I think we're getting a little

09:15:03 argumentative.

09:15:04 THE COURT: I will sustain.

09:15:04 **Q.** Well, how often do you sweep the parking lot when
09:15:08 it's fifteen degrees out in the wintertime?

09:15:10 **A.** As much as --

09:15:11 MR. MOODY: Objection. I don't think it's
09:15:12 relevant.

09:15:13 THE COURT: I'll allow the question.

09:15:14 **A.** As much as I can due to cigarette butts and things
09:15:17 being dropped outside, so any time there's snow that's
09:15:20 melting or after the cars are in and out of the parking
09:15:24 lot, there is no snow in the parking lot if it's only
09:15:26 within a couple inches, so I go out almost daily to try to
09:15:30 pick up the parking lot for whatever has appeared.

09:15:35 **Q.** Do you recall telling the investigators that it was
09:15:40 freaking nice out when you were sweeping the parking lot
09:15:43 and found this index card?

09:15:44 **A.** Nice out meaning I was not shoveling snow, and I
09:15:49 remember saying something about that it was not a shovel,
09:15:51 doesn't mean that it's actually a broom where you're
09:15:54 sweeping a dry parking lot, I many times used a broom to
09:15:58 get the cigarette butts and that cleaned up out of the
09:16:01 parking lot. Does not mean that it was dry.

09:16:03 **Q.** But you used the word summertime to --

09:16:05 **A.** I said at least the summer.

09:16:07 MR. MOODY: Objection.

09:16:08 **A.** Of ninety-three.

09:16:09 THE COURT: Sustained.

09:16:10 **A.** I did not say it was summertime because I cannot
09:16:12 tell you when I found that card.

09:16:15 **Q.** Now, when you found the card, the one thing that
09:16:20 stuck in your mind was a code name that was on that index
09:16:23 card, do you remember that?

09:16:24 **A.** Correct, yes.

09:16:25 **Q.** And the code name was having to do with Pretty
09:16:30 Woman, right?

09:16:31 **A.** Something, either Julia Robert, Pretty Woman stuck
09:16:36 in my head because I always liked the movie and it was
09:16:38 pretty easy to remember that.

09:16:40 **Q.** And again, Heidi Allen was a friend of yours, you
09:16:43 testified that when you hired her she was a friend of
09:16:45 yours?

09:16:45 **A.** A younger friend, not someone I hung out with but
09:16:50 friendly.

09:16:51 **Q.** After you found this sensitive information in the
09:16:55 parking lot of your store, you must have had a conversation
09:16:59 with Heidi Allen about finding those documents in the
09:17:02 parking lot.

09:17:02 **A.** No, I did not.

09:17:03 **Q.** You never told your friend ever --

09:17:06 MR. MOODY: Objection, Judge, she just --

09:17:07 THE COURT: Sustained.

09:17:08 MR. MOODY: Asked and answered.

09:17:10 THE COURT: Sustained.

09:17:10 **Q.** But you talked to her about a lot of different 09:17:21 things, right?

09:17:21 **A.** Some things, yes.

09:17:22 **Q.** She confided in you in a lot of her personal 09:17:25 information, correct?

09:17:25 **A.** Some, yes.

09:17:26 **Q.** Including her -- her boyfriend Brett?

09:17:28 **A.** Yes.

09:17:29 **Q.** When the deputy came to pick up this information 09:17:37 from you, this index card, do you recall how long he spent 09:17:41 talking to you about finding this index card in the parking 09:17:43 lot?

09:17:44 **A.** I do not.

09:17:44 **Q.** You have no idea.

09:17:46 **A.** I do not.

09:17:47 **Q.** Now, after January twenty-second of 2015, after you 09:18:03 were interviewed by investigators, did you meet with the 09:18:07 district attorney?

09:18:08 **A.** Yes.

09:18:08 **Q.** And before you testified here today.

09:18:11 **A.** Yes.

09:18:12 **Q.** And did he show you a punch card?

09:18:15 **A.** Yes.

09:18:16 **Q.** And is that -- what did he -- what did he show you 09:18:21 when he showed you that punch card? What did he talk to 09:18:24 you about when he -- when he presented you with that punch 09:18:26 card?

09:18:27 **A.** He asked me if I recognized that. I said no. He 09:18:31 asked me if I knew when I found Heidi Allen's, the card 09:18:35 with Heidi's name on it. I didn't. He said that was the 09:18:41 log of how they kept track 'cause they didn't have 911 so 09:18:45 that was something that the department had showing my time 09:18:50 or day of call.

09:18:52 **Q.** So is it fair to say that your recollection of the 09:18:57 condition of what it was like outside was prompted by 09:19:04 showing you that punch card?

09:19:06 **A.** No because I still can't tell you exactly what the 09:19:08 date was on the punch card. I know because you're telling 09:19:13 me.

09:19:14 **Q.** But -- well, I didn't tell you what was on the punch 09:19:17 card.

09:19:17 **A.** He mentioned January of ninety-two.

09:19:19 **Q.** So that's why you think now it was wintertime and 09:19:22 the pavement was wet when you were outside sweeping on 09:19:26 January twenty-third of 1992?

09:19:27 **A.** That is incorrect.

09:19:36 **Q.** Were you aware that your master file had been
09:19:40 breached during the original investigation of Heidi Allen?

09:19:43 **A.** I did not.

09:19:48 **Q.** And you have no idea how long those documents were
09:20:11 in the parking lot before they were found, is that correct?

09:20:14 **A.** Correct.

09:20:30 **Q.** And as far as you know, no one interviewed you about
09:20:36 that index card after Heidi Allen was abducted?

09:20:40 **A.** I do not remember.

09:20:42 **Q.** You testified in the trial, do you remember that?

09:20:44 **A.** Yes.

09:20:45 **Q.** Were you ever asked any questions about finding that
09:20:48 index card in the parking lot?

09:20:50 **A.** I do not believe that I was.

09:21:00 **Q.** Now, looking at the photograph that's next to you up
09:21:05 there, I think it's SS if I'm not mistaken?

09:21:10 **A.** SSS.

09:21:11 **Q.** SSS. Looking at that photograph that was -- that
09:21:16 represents what the store looked like inside the morning
09:21:18 Heidi Allen was abducted?

09:21:20 **A.** Correct.

09:21:20 **Q.** Now, you would agree with me that it doesn't appear
09:21:24 that there was any type of struggle inside that store, is
09:21:27 that correct?

09:21:27 MR. MOODY: Objection, Judge. I don't know

09:21:29 that we have a foundation that she would be able to
09:21:31 tell that one way or the other.

09:21:32 THE COURT: I think it's pretty common
09:21:34 knowledge if you see things knocked over you might
09:21:38 determine as a struggle. I'll allow the question.

09:21:39 **A.** Can you repeat it?

09:21:40 **Q.** Is it fair to say just looking at the document that
09:21:42 or the photograph that it doesn't appear there was a
09:21:46 struggle that morning?

09:21:46 **A.** Correct.

09:21:47 **Q.** Now there were times where you would have to go
09:21:51 outside while you were working at the D & W to assist a
09:21:54 customer with the pumps, is that fair to say?

09:21:56 **A.** If someone asked.

09:21:57 **Q.** You -- you would do it?

09:21:59 **A.** Correct.

09:22:00 **Q.** Were you familiar with a place called Spinners that
09:22:21 was right down the street from the D & W?

09:22:23 **A.** I've never been in there, but I do know of the
09:22:26 place.

09:22:26 **Q.** About how far is it from D & W down to Spinners?

09:22:31 **A.** I would say less than a mile.

09:22:41 **Q.** Now back in 1994, do you know whether people were
09:22:44 living in the hotel at Spinners?

09:22:46 **A.** I do not.

09:22:48 Q. Did you have any customers that would come in from Spinners and be regular customers down at the D & W?

09:22:54 A. I don't know. I don't know who was staying there or if anyone stayed there.

09:23:00 Q. Would you consider it to be a bit transient?

09:23:04 MR. MOODY: Objection, Judge. She says she doesn't know anybody that lives there.

09:23:07 THE COURT: Sustain the objection.

09:23:21 MS. PEEBLES: Excuse me a minute.

09:23:23 THE COURT: Sure.

09:23:24 (Whereupon, there was a pause in the proceeding.)

09:23:26 Q. Ms. Duell, you mentioned during your direct testimony that you found the two -- the card and then the notes. Do you have the card and the notes in front of you?

09:23:46 A. No.

09:23:47 MS. PEEBLES: Where are they?

09:24:00 Q. In addition to the card, there's a -- this is what you're saying was -- was found?

09:24:07 A. Correct.

09:24:08 Q. There's some phone numbers on there?

09:24:11 A. Yes.

09:24:12 Q. And some names?

09:24:13 A. Yes.

09:24:14 Q. Do you recognize all the names on that?

09:24:17 **A.** I recognize Heidi's, Brett's, I don't know P.J.
09:24:26 Gorman, I don't know that name, and I don't know a Tracey
09:24:29 Matthews' name, so I only know the first two.
09:24:33 **Q.** And under those names that you just said you didn't
09:24:37 recognize, are there phone numbers or addresses or any
09:24:40 contact?
09:24:40 **A.** Addresses, no. Phone numbers.
09:24:46 **Q.** Thank you. Now, the driveway where these were
09:24:51 found, there's two entrances to the D & W back in 1994?
09:24:55 **A.** Correct.
09:24:56 **Q.** And which --
09:24:57 MR. MOODY: Excuse me. Two entrances to the
09:25:00 D & W store or to the driveway itself? I just want to
09:25:02 be clear.
09:25:02 THE COURT: I'm assuming the store. That's
09:25:03 what I caught.
09:25:04 **Q.** Well, the store. There's two entranceways, right?
09:25:07 **A.** One for customers and one for just employees.
09:25:10 **Q.** Okay, well, if you are driving and you pull in, I
09:25:13 mean there's two ways to access the D & W, correct?
09:25:16 **A.** Correct.
09:25:17 MR. MOODY: Objection.
09:25:19 MS. PEEBLES: I'm not talking about the doors,
09:25:21 I'm talking about the driveway.
09:25:22 MR. MOODY: That's the parking lot. I wasn't

09:25:24 sure what she was talking about.
09:25:26 THE WITNESS: I misunderstood also. There is
09:25:28 two driveways.
09:25:29 **Q.** So there's two, there's one from 104 and 104B,
09:25:32 right?
09:25:33 **A.** Correct.
09:25:33 **Q.** Now which driveway did you find the index card and
09:25:36 the card with the names and the numbers on it?
09:25:39 **A.** It's all one driveway. It's just a parking lot that
09:25:43 has two ways in or out. I found it closer to the store.
09:25:50 Which side I can't tell you.
09:25:52 **Q.** All right, so you didn't find it near the pay phone.
09:25:55 Is there a pay phone in the parking lot?
09:25:57 **A.** That's where it would be was close up to the store.
09:25:59 **Q.** The pay phone would have been?
09:26:01 **A.** Correct, that's on the store, and the cards were up
09:26:05 towards the store.
09:26:06 **Q.** In the parking lot but upwards towards the store?
09:26:09 **A.** Correct.
09:26:10 **Q.** Now, I just want to be clear, you know that you
09:26:15 found the card at least in ninety-three, is that correct?
09:26:19 **A.** At least, or I should say at the latest. I'm not
09:26:26 sure the wording on that.
09:26:29 **Q.** Did you get a directive from anyone at the Sheriff's
09:26:32 Department that told you not to tell anybody that you found

09:26:35 this information in your parking lot?
09:26:37 A. I don't remember.
09:26:45 MS. PEEBLES: No further questions.
09:26:46 THE COURT: Thank you. Mr. Moody, just give
09:26:51 me a second please.
09:26:52 (Whereupon, there was a pause in the
09:27:05 proceeding.)
09:27:05 THE COURT: Mr. Moody, need the microphone?
09:27:09 MR. MOODY: Yeah.
09:27:10 THE COURT: Ms. Peebles?
09:27:11 MR. MOODY: Need it for the next witness.

REDIRECT EXAMINATION

09:27:23 BY MR. MOODY:
09:27:24 Q. How many times have you found paperwork in the
09:27:28 parking lot of the D & W that you turned -- that you
09:27:31 eventually turned over to the Sheriff's Department?
09:27:33 A. Just the once.
09:27:33 Q. Just the once. Thank you.
09:27:35 MR. MOODY: No further questions, Judge.
09:27:38 THE COURT: Ms. Peebles?
09:27:40 MS. PEEBLES: I have no further questions.
09:27:42 THE COURT: You're done. Thank you. Have a
09:27:44 nice day.
09:27:44 THE WITNESS: Thank you.
09:27:45 THE COURT: Next witness.

09:27:46 MR. MOODY: People call John Cox.

09:28:13 THE COURT: Ms. Peebles, I don't think you
09:28:18 moved that in, the transcript.

09:28:20 MS. PEEBLES: I didn't but I will. Is there
09:28:22 an objection?

09:28:22 MR. MOODY: Yes, that she testified. Her
09:28:24 testimony is the evidence, not -- not that statement.

09:28:28 MS. PEEBLES: I guess they're opposing my
09:28:30 offer of the transcript from the audio interview,
09:28:33 Judge.

09:28:33 THE COURT: I'll allow it. I'm not sure where
09:28:42 you are with your exhibits.

09:28:48 MS. PEEBLES: I'll get it to the Court after
09:28:50 that witness.

09:28:50 THE COURT: That's fine.

09:28:52 THE CLERK: Raise your right hand, left on the
09:28:54 Bible.

09:28:55 JOHN COX, Called as a witness, having been duly
09:28:56 sworn, was examined and testified as follows:

09:28:56 THE CLERK: Please state your name for the
09:29:04 record.

09:29:04 THE WITNESS: My name is Cox, John Francis
09:29:06 Cox.

09:29:07 THE CLERK: Spell your last name.

09:29:08 THE WITNESS: C-O-X.

09:29:12 THE COURT: Mr. Cox--

THE WITNESS: Yes, sir.

09:29:13 THE COURT: Before Mr. Moody starts, I want to
09:29:15 ask you whether or not you consent to having your
09:29:18 testimony audio and videotaped.

09:29:19 THE WITNESS: I don't believe it's necessary,
09:29:20 Your Honor. Thank you.

09:29:21 THE COURT: Thank you.

09:29:25 DIRECT EXAMINATION
09:29:25 BY MR. MOODY:

09:29:27 **Q.** Are you employed, sir?

09:29:31 **A.** Say it again please?

09:29:32 **Q.** Are you employed?

09:29:33 **A.** No, sir.

09:29:33 **Q.** Are you retired from somewhere?

09:29:35 **A.** Yes, sir.

09:29:35 **Q.** Whereabouts?

09:29:36 **A.** Oswego County Sheriff's Department.

09:29:38 **Q.** And how long did you work for the Oswego County
09:29:41 Sheriff's Department?

09:29:42 **A.** In the area of a little over thirty-three years.

09:29:44 **Q.** Do you remember from when to when?

09:29:45 **A.** I started in April of 1980 and retired in the spring
09:29:49 of May eighteenth, 2013.

09:29:52 **Q.** And what was the highest rank you achieved with the

09:29:57 Sheriff's Department?

09:29:59 **A.** Honorably I was able to leave with the rank of first sergeant. I was the second one in the agency.

09:30:05 **Q.** Now, I want to direct your attention back to the time period of late 1991, early 1992. Were you familiar with how complaints came into the Sheriff's Department and how officers would be dispatched?

09:30:19 **A.** At the time, having been a platoon sergeant, in other words, there was -- there was no change from the time of my first date of employment as of January of 1981, that it was all pretty much handwrote, and it was record keeping by radio logs and complaints that were handwritten and filed and that sort of thing.

09:30:39 **Q.** Are you familiar with something called a punch card?

09:30:41 **A.** Surely.

09:30:42 **Q.** What's a punch card?

09:30:43 **A.** A punch card is basically a blank formatted card that you would use in reference to a time stamp so if you got a complaint or there was an issue that you had to document, you would use this card and time stamp it and fill it out by hand.

09:30:57 **Q.** Who -- would that -- would that be a particular person working in the Sheriff's Department who would -- who would handle the punch cards, a particular assignment?

09:31:05 **A.** At the beginning or --

09:31:07 **Q.** Yes, at the beginning.

09:31:08 **A.** Whoever would be the person -- anyone could make out a punch card. If they had somebody that had called on the telephone and wanted to report something, then that person would make out the punch card, the complaint card is what we referred to them as, and bring it to the attention for assignment, could be to a person in the civil division, the road patrol, investigator, whatever.

09:31:29 **Q.** And I think you said back in 1991 and ninety-two you were a platoon sergeant?

09:31:34 **A.** That's correct. I served thirteen years with a platoon.

09:31:39 **Q.** And your responsibility as a platoon sergeant would be basically what?

09:31:43 **A.** Road patrol.

09:31:44 **Q.** Would you be in charge of assigning deputies then to do certain assignments?

09:31:48 **A.** That's correct.

09:31:49 **Q.** I want to show you what's been marked as People's Exhibit 144, and it's in a plastic thing, but if you could take a look at that and see if you can recognize that. Pull that out of there

09:31:59 **A.** It's all right to remove it?

09:32:01 **Q.** Yeah, it's been opened.

09:32:09 **A.** Do I recognize it? Yes, sir. It's in my hand.

09:32:11 **Q.** Okay, are your initials anywhere on it?
09:32:15 **A.** I have my identification, and on the back are my
09:32:19 initials. That would be at the completion of the
09:32:21 assignment; in other words, that was something that I did.
09:32:23 **Q.** Okay, and you said it's in your handwriting?
09:32:25 **A.** Yes, sir.
09:32:26 **Q.** The entire document is in your handwriting?
09:32:29 **A.** Yes, sir.
09:32:29 **Q.** Okay, and does that mean that you took this punch
09:32:34 card?
09:32:34 **A.** Say it again?
09:32:34 **Q.** Does that mean that you took this punch card or this
09:32:37 call?
09:32:37 **A.** I -- I prepared the whole document if that's what
09:32:40 your question is.
09:32:41 **Q.** Yes, basically.
09:32:42 **A.** Yes, sir.
09:32:42 **Q.** And this -- the document, what does basically it
09:32:47 reflect?
09:32:49 **A.** Well, after a long time period it indicates to me
09:32:52 that I would have received a phone call from a person at
09:32:57 the time; in other words, they identified the person as
09:32:58 Kris Duell.
09:33:01 **Q.** Okay, and what does it indicate that the nature of
09:33:04 the call or complaint was?

09:33:06 A. As I recollect it, I read this card, it comes back
09:33:09 to me it was found property, there was -- she had called
09:33:12 and I had sent someone to pick it up.

09:33:14 Q. Does it indicate what the property was?

09:33:16 A. At the time, no. I think that I can recall that it
09:33:20 was -- it had to be something that was relevant to the
09:33:22 Sheriff's Department for me to send a deputy. Like if you
09:33:26 had found property, could be a bicycle, if it was someone
09:33:32 turning in drugs it would be contraband, so found property
09:33:35 wasn't necessarily something that I would have considered
09:33:38 to be in the same intrinsic value.

09:33:40 Q. As a bicycle or drugs?

09:33:42 A. Or a car if it was stollen or something, it would
09:33:45 have been written up differently.

09:33:46 Q. Okay, and you said that you sent a deputy out. Who
09:33:49 did you send out to get --

09:33:50 A. At the time the person was working for me in my
09:33:52 platoon was Deputy Michael Montgomery.

09:33:55 Q. Okay, and where does it state that the location of
09:33:58 the property was that it was found, where the property was
09:34:01 found?

09:34:01 A. The location of the card says -- it's written on the
09:34:04 card D & W store, Route 104 and 104B. That's from the
09:34:09 card. I can't remember everything in that regard but my
09:34:11 recollection.

09:34:11 **Q.** But that's in your handwriting?

09:34:13 **A.** Every bit of it.

09:34:14 **Q.** Okay, and the D & W, what -- what area of patrol 09:34:20 would that have been for the Sheriff's Department?

09:34:22 **A.** We had east/west and central. That would be in the 09:34:25 middle. It was referred to as the central area.

09:34:27 **Q.** Does that mean the deputy that you assigned to it 09:34:31 was working at the central area at that time?

09:34:33 **A.** Most probably unless there was something like a 09:34:35 vacation day or something of that nature, sometimes we had 09:34:38 to move people around.

09:34:39 **Q.** And what -- does it indicate what happened to the 09:34:42 property after or does it -- excuse me, what I think you 09:34:46 said it was Deputy Montgomery that was assigned, is that 09:34:50 accurate?

09:34:50 **A.** That's correct.

09:34:50 **Q.** And does it indicate what happened to the property 09:34:51 after Deputy Montgomery recovered it?

09:34:53 **A.** Again, based on what I have written here in my own 09:34:58 hand, it turned over to, T-O-T, Deputy VanPatten. I don't 09:35:02 recollect I ever saw it or anything like that. It was 09:35:04 simply, in other words, the documentation. For me to have 09:35:08 completed this, it would have been because I was on the 09:35:10 desk.

09:35:10 **Q.** Is there -- is there any method on that punch card

09:35:14 that indicates the date and time that the -- that the call
09:35:17 came in and when it was completed?
09:35:20 **A.** It would be January 23 at 9:12 in the morning of
09:35:26 1992.
09:35:28 **Q.** And is that --
09:35:29 **A.** I'm sorry?
09:35:29 **Q.** Is that when it started or when the --
09:35:32 **A.** This is -- the first punch would have been when I
09:35:35 got the call.
09:35:36 **Q.** And when you say "punch," what do you mean?
09:35:38 **A.** Hitting, actually causing a time stamp on the card
09:35:43 at the time of the call that I got, and again, indicating
09:35:46 the complainant's name, Mrs. Duell.
09:35:48 **Q.** When you say -- kind of made a motion with your hand
09:35:52 like punching an old time clock?
09:35:52 **A.** Physically, in order for this to be time stamped,
09:35:55 you had do it physically like a clock mechanism.
09:35:58 **Q.** And you said that that's when it was started. When
09:36:02 was the card completed, what's the last time stamp on the
09:36:06 card?
09:36:06 **A.** 10:15 in the same day, January twenty-third of
09:36:11 ninety-two.
09:36:11 THE COURT: 10:15 a.m.?
09:36:13 THE WITNESS: Yes, sir, I'm sorry.
09:36:15 **Q.** Now, you were still working with the Sheriff's

09:36:18 Department back in 1994 when Heidi Allen disappeared, is
09:36:23 that accurate?

09:36:23 **A.** That's correct.

09:36:24 **Q.** Do you remember any discussions or any -- anyone
09:36:28 asking you about this -- this punch card or this complaint
09:36:31 back in 1994?

09:36:32 **A.** No, sir, I do not.

09:36:33 **Q.** After January of 1992, when was the next time you
09:36:40 recall seeing this -- a punch card or a copy of it?

09:36:43 **A.** Just when I first got a subpoena notice and you and
09:36:46 I reviewed it.

09:36:48 **Q.** And that would have been approximately when?

09:36:50 **A.** Must have been a month ago or more I believe.

09:36:53 MR. MOODY: Thank you. I have no further
09:36:55 questions.

09:36:56 THE COURT: Just give me a second please, Ms.
09:36:58 Peebles. Defense Exhibit 162 is moved in.

(Defendant's Exhibit No. 162 was received in evidence).

09:38:03 THE COURT: Go ahead, Ms. Peebles.

09:38:09 CROSS-EXAMINATION

09:38:10 BY MS. PEEBLES:

09:38:11 **Q.** Now Mr. Cox, I want to talk to you about when you
09:38:20 were first asked about this punch card, do you understand?

09:38:26 **A.** Surely.

09:38:27 Q. Now is it your testimony that the first time that you were ever questioned about this punch card was about a month and a half ago?

09:38:36 A. My recollection, yes, ma'am, it is.

09:38:38 Q. Now, when you were asked about that punch card, did you have any independent recollection about what took place when you were taking the information down for -- for the punch card?

09:38:50 A. Prior to seeing the card?

09:38:51 Q. Yes.

09:38:52 A. No. I've made out hundreds of them, ma'am. I don't recollect one or another.

09:38:57 Q. All right, fair enough. Now did you ever see the property that was called in by Kristine Duell? Did you personally ever see it?

09:39:06 A. My best recollection is no.

09:39:08 Q. Now, it would have to be pretty important information or property for you to send a patrol person out to pick it up, is that a fair statement?

09:39:17 A. Partially. I would think that anything that would be relevant, if it was something to do with the Sheriff's Department, I would not be able to really give any kind of intrinsic value as to any importance or anything.

09:39:29 Q. And you were involved in the original investigation of Heidi Allen when she was initially abducted, is that

09:39:35 true?

09:39:36 A. There were different time periods of the initial
09:39:39 time period, yes, ma'am, because we all had assignments.

09:39:41 Q. Right.

09:39:42 A. Everyone.

09:39:42 Q. So you were involved.

09:39:43 A. Oh, yeah.

09:39:44 Q. Right? Now you were never asked about any property
09:39:48 that you were directed to pick up by Kristine Duell during
09:39:52 that time period, during the original --

09:39:53 A. I don't recall anything of that nature, ma'am.

09:39:56 Q. Now, you were lieutenant in charge of road patrol?

09:40:02 A. Not at all.

09:40:02 Q. I'm sorry, what was your position?

09:40:06 A. Patrol sergeant.

09:40:07 Q. Patrol sergeant, I'm sorry.

09:40:08 A. Yes, ma'am.

09:40:10 Q. Did you ever work with confidential informants?

09:40:11 A. No, ma'am.

09:40:11 Q. Do you know what the protocol was at all with regard
09:40:14 to working with confidential informants?

09:40:16 A. Where?

09:40:17 Q. In the Oswego County Sheriff's Department.

09:40:19 A. Not at all. We didn't have anything. If -- if
09:40:21 there was something that I recollect at all, it would be in

09:40:25 an individual basis where if we had something that came in
09:40:27 for information that somebody had stollen something,
09:40:32 burglary related, would have been documented like a punch
09:40:37 card and turned over to a Criminal Investigation Division
09:40:40 if there was a preexisting complaint. If there had not
09:40:43 been, then it would send a deputy to start the complaint,
09:40:46 so I don't know that that would be any different than any
09:40:48 other complaint at the time period, ma'am.

09:40:50 **Q.** Maybe you misunderstood my question. Let me ask you
09:40:53 this.

09:40:53 **A.** Um hum.

09:40:54 **Q.** You would agree with me that the idea of exposing
09:40:59 someone's identity as a confidential informant would be a
09:41:02 rather serious matter, you would agree with me?

09:41:04 **A.** Hence the word confidential would come into play.

09:41:07 **Q.** Correct. Pretty logical, right?

09:41:09 **A.** In any -- any police agency or any situation.

09:41:13 **Q.** And it would be important to make sure that that
09:41:17 information was secure, correct?

09:41:20 **A.** I would have to agree with you.

09:41:21 **Q.** Yeah, and in fact, not everyone in the Sheriff's
09:41:26 Department would actually know who was a confidential
09:41:29 informant even if they were working with a particular
09:41:33 individual at the Sheriff's Department, is that fair to
09:41:36 say?

09:41:36 **A.** It is, because in thirty-three years, I'm sure that
09:41:38 there were things that were kept in confidence that I have
09:41:41 no clue. It wasn't my job.

09:41:45 **Q.** Not suggesting that it was. But you know that the
09:41:51 identity of confidential informants wasn't shared with
09:41:53 everybody in the Sheriff's Department, that's a fair
09:41:56 statement?

09:41:56 **A.** Surely.

09:41:58 **Q.** And we could agree that there's no indication as to
09:42:13 when Ms. Duell found the documents in the parking lot?

09:42:17 **A.** I disagree. It's on the card.

09:42:20 **Q.** Can you look at Exhibit 144?

09:42:22 **A.** I don't have it.

09:42:32 **Q.** She calls it in on January twenty-third, but where
09:42:35 on that card does it say she found it and what time she
09:42:38 found it?

09:42:39 **A.** Could I read from the card that I put in my own
09:42:41 hand?

09:42:42 **Q.** You can read from the card.

09:42:43 **A.** Complainant advised that the property was found in
09:42:46 the parking lot above, which would be the location, on
09:42:51 01/29, I'm sorry, 2/29/92, and possibly belongs to an
09:42:59 unknown OCSD which would be Oswego County deputy or
09:43:03 Sheriff's Department person, Deputy VanPatten.

09:43:06 **Q.** Does it say on there the time when she found that

09:43:09 document?

09:43:09 **A.** Oh, just a date, ma'am.

09:43:11 **Q.** Doesn't say when she found it, correct?

09:43:13 **A.** No, that's correct.

09:43:14 **Q.** All right.

09:43:14 **A.** It states -- what I had written on here is what she
09:43:17 told me.

09:43:18 **Q.** All right, so what you wrote down is the day that
09:43:21 when she called it in, she says she found it on the
09:43:24 twenty-second?

09:43:26 **A.** 01/22/92, correct.

09:43:28 **Q.** And you wrote -- you took that information on what
09:43:31 day?

09:43:31 **A.** It would be the following day on January
09:43:33 twenty-third.

09:43:34 **Q.** Okay, so she doesn't tell you exactly what time she
09:43:38 found it, but it was actually the day before, correct?

09:43:41 **A.** Based on everything here.

09:43:42 MR. MOODY: Objection, Judge.

09:43:46 **Q.** Based on everything on that card, right?

09:43:47 **A.** That's all I have to go by.

09:43:49 **Q.** Okay, thank you very much.

09:43:50 MS. PEEBLES: I have no further questions.

09:43:52 THE WITNESS: Thank you, ma'am.

09:43:53 THE COURT: Mr. Moody, anything else?

09:43:54 MR. MOODY: No.

09:43:56 THE WITNESS: Does this go to you, sir?

09:43:58 THE COURT: It does, yes. You can step down,
09:43:59 Mr. Cox.

09:44:00 THE WITNESS: Thank you very much.

09:44:01 THE COURT: Next witness.

09:44:02 MR. MOODY: Judge, as I mentioned before we
09:44:05 started, I have a couple of witnesses on standby. I
09:44:08 would -- if I could have -- I have another witness
09:44:10 here, but I -- just so we don't -- when we end I would
09:44:13 like to have the next witness here.

09:44:14 THE COURT: Why don't you call the next
09:44:16 witness and have Mr. Oakes, can you notify the standby
09:44:19 witness?

09:44:19 MR. OAKES: Yes.

09:44:19 THE COURT: Who is your next witness?

09:44:22 MR. MOODY: People would call Christopher
09:44:36 VanPatten.

09:45:01 THE CLERK: Raise your right hand, left on the
09:45:05 Bible.

09:45:05 CHRISTOPHER VANPATTEN, Called as a
witness, having been duly sworn, was examined and testified
09:45:07 as follows:

09:45:07 THE CLERK: Please state your name for the
09:45:13 record.

09:45:13 THE WITNESS: Christopher VanPatten.

09:45:15 THE CLERK: Spell your last name.

09:45:16 THE WITNESS: V-A-N-P-A-T-T-E-N.

09:45:19 THE CLERK: Thank you.

09:45:20 THE COURT: Mr. VanPatten, before we start
09:45:21 answering any questions from Mr. Moody, I'm going to
09:45:23 ask you do you consent to having your testimony audio
09:45:27 taped and video taped.

09:45:28 THE WITNESS: No, I do not.

09:45:29 THE COURT: Thank you.

09:45:49 DIRECT EXAMINATION

09:45:49 BY MR. MOODY:

09:45:50 **Q.** Are you currently employed, sir?

09:45:53 **A.** Yes, I am.

09:45:54 **Q.** Whereabouts?

09:45:55 **A.** I work for the James A. Fitzpatrick Nuclear Power
09:45:58 Plant.

09:45:59 **Q.** Doing what there?

09:45:59 **A.** I'm a security shift supervisor.

09:46:01 **Q.** How long have you been doing that?

09:46:02 **A.** Six years.

09:46:03 **Q.** And prior to joining the Fitzpatrick Power Plant,
09:46:07 were you employed?

09:46:08 **A.** Yes, I was.

09:46:09 **Q.** Whereabouts?

09:46:10 **A.** The Oswego County Sheriff's Department.

09:46:11 **Q.** And how long were you employed by the Oswego County Sheriff's Department?

09:46:15 **A.** Twenty years.

09:46:17 **Q.** What was the highest rank you obtained?

09:46:18 **A.** Criminal investigator.

09:46:19 **Q.** And how long were you a criminal investigator?

09:46:21 **A.** Approximately seven years.

09:46:22 **Q.** And when did you retire specifically?

09:46:26 **A.** February ninth, 2009.

09:46:29 **Q.** And when did you -- then when did you join the Oswego County Sheriff's Department?

09:46:38 **A.** February ninth, 1989.

09:46:41 **Q.** I want to direct your attention now to the time periods around 1991 and 1992. What were your duties around that period of time?

09:46:51 **A.** I was a road patrol officer with the Oswego County Sheriff's Department.

09:46:54 **Q.** Did you also have an additional assignment besides being a road patrol officer?

09:46:58 **A.** Yes, I did.

09:46:59 **Q.** And what was that?

09:46:59 **A.** I was also a member of the ACT Team or the anti-crime team.

09:47:03 **Q.** And what does the ACT Team do?

09:47:05 **A.** We had a bunch of responsibilities that we did. We
09:47:08 did saturation for high crime rates where the investigators
09:47:13 would ask us to come in and try to develop information with
09:47:16 regards to a rash of burglary that was going on. We did
09:47:19 marijuana eradication, we also did alcohol/beverage control
09:47:23 law enforcement as well as some undercover drug operations.

09:47:28 **Q.** And as part of that investigation, would you -- or
09:47:35 part of that assignment would you work that full time or
09:47:38 how would it work with your road patrol duties?

09:47:40 **A.** It was part time. What we did was a couple days a
09:47:43 week we overlapped with a regular shift. On the days that
09:47:47 we overlapped with a regular shift we did the ACT Team-type
09:47:50 work. The other days that we were not overlapping we did
09:47:54 road patrol functions.

09:47:55 **Q.** As part of your duties with the ACT Team, would you
09:47:58 occasionally meet with individuals who might have drug
09:48:02 information?

09:48:02 **A.** Yes.

09:48:03 **Q.** When you did that, was there a general practice
09:48:07 about documenting them and who they are?

09:48:10 **A.** Yes.

09:48:10 **Q.** Could you describe that information or that
09:48:13 procedure that you used?

09:48:14 **A.** If information was developed where we were meeting
09:48:16 with somebody regarding possible illegal drug information,

09:48:19 we would meet with that person face to face, find out what
09:48:22 information they had that they want to share with us and
09:48:25 we'd complete a pedigree card.

09:48:27 **Q.** The pedigree card, what would that kind of
09:48:29 information be on the pedigree card?

09:48:31 **A.** Name, address, phone number, we take a photograph
09:48:34 and put the thumbprints on the back and a code name.

09:48:36 **Q.** What's the purpose of the code name?

09:48:38 **A.** The code name was in case the person was to call the
09:48:41 office to ask for me, the desk sergeant or the person on
09:48:45 the desk at the time would not have to put their name over
09:48:47 the radio, they would use the code name which was easy for
09:48:50 them to remember, and then I would be able to associate who
09:48:53 that person was.

09:48:55 **Q.** Are you familiar with the term confidential
09:48:57 informant?

09:48:57 **A.** Yes, I am.

09:48:58 **Q.** What does that mean to you?

09:48:59 **A.** What it means to me is a person that shares
09:49:02 information with police in confidence.

09:49:05 **Q.** Could they be doing more than that as well?

09:49:09 **A.** Yes, they could.

09:49:10 **Q.** What else could they be doing?

09:49:11 **A.** They could also be assisting you, if you are talking
09:49:14 about drugs, purchasing the drugs for you or introducing

09:49:16 somebody into the illegal drug activity to let them do it.

09:49:22 **Q.** Did every person that you met with who received a
09:49:25 card and a code name for lack of a better term work with
09:49:30 you make buys and introduce people?

09:49:32 MS. PEEBLES: Objection, relevance.

09:49:33 THE COURT: No, that's relevant.

09:49:34 **A.** No.

09:49:35 **Q.** Are you familiar with Heidi Allen?

09:49:38 **A.** Yes, I am.

09:49:39 **Q.** At some point in time did you meet with Heidi Allen
09:49:42 with regard to any information she had with regarding
09:49:45 drugs?

09:49:45 **A.** Yes, I did.

09:49:45 **Q.** Do you remember when that was?

09:49:47 **A.** I believe it was December eleventh, 1991.

09:49:50 **Q.** How did that meeting come about?

09:49:52 **A.** I had a conversation with her uncle previous to
09:49:55 that, it was at that time town of Justice Russell Sturtz.

09:49:59 **Q.** Town of --

09:50:00 **A.** Town of New Haven.

09:50:01 **Q.** Town of New Haven?

09:50:03 **A.** Russell Sturtz who was also a personal friend of
09:50:06 mine. He said that his niece wanted to share some
09:50:09 information and I followed up on it.

09:50:10 **Q.** Had you met with -- had you met Heidi Allen prior to

09:50:13 that?

09:50:13 A. No.

09:50:13 Q. And where did you go to meet with her?

09:50:18 A. I went to her residence in the Town of New Haven.

09:50:20 Q. Did you go alone?

09:50:21 A. No, I did not.

09:50:21 Q. Who else did you go?

09:50:22 A. I took the shift supervisor at that time was
09:50:24 Sergeant Roy Lortie.

09:50:26 Q. When you say shift supervisor, was he your shift
09:50:28 supervisor or --

09:50:30 A. He was the acting sergeant for the ACT Team, yes.

09:50:33 Q. Okay, so he's the ACT Team supervisor?

09:50:35 A. Yes.

09:50:36 Q. When you met with her you said it was at her home.
09:50:39 Was she alone?

09:50:40 A. No.

09:50:40 Q. Who else was with her?

09:50:41 A. Her parents were in the background of the house.

09:50:45 Q. And approximately how old was she at that point in
09:50:48 time?

09:50:48 A. Sixteen.

09:50:51 Q. And if you remember, how long did you meet with her?

09:50:55 A. I don't --

09:50:56 Q. You don't remember?

09:50:57 **A.** I'm not sure.

09:50:58 **Q.** Can you tell us what if any kind of information she gave you?

09:51:00 **A.** Yes, I can.

09:51:01 **Q.** What was that?

09:51:02 **A.** She shared what information she had regarding illegal drug activity within Oswego County and I took some field notes.

09:51:10 **Q.** The information she had, how would you describe it?

09:51:14 **A.** It was basically rumor mill, what she heard on the street.

09:51:18 **Q.** Now you said she was how old approximately?

09:51:21 **A.** Sixteen.

09:51:22 **Q.** Still in high school then?

09:51:23 **A.** Yes.

09:51:23 **Q.** Would you characterize it as the same kind of information that any high school student might have about their high school?

09:51:29 MS. PEEBLES: Objection, relevance.

09:51:30 THE COURT: I'll sustain it.

09:51:33 **Q.** Did you on that date fill out the card that you described with her?

09:51:40 **A.** Yes, I did.

09:51:40 **Q.** I want to show you what's been marked as People's

09:51:45 Exhibit B and ask you -- there is a number of items in here

09:51:48 and ask you if can look through all those items.

09:52:01 (Whereupon, there was a pause in the
09:52:12 proceeding.)

09:52:12 **Q.** Okay, do you recognize any of those items?

09:52:14 **A.** Some of the items, yes.

09:52:15 **Q.** Could you tell me what items you recognize?

09:52:18 **A.** The three by five index card with her name on it.

09:52:21 **Q.** Okay.

09:52:23 **A.** Three by five index card with the field notes that I
09:52:26 took. And the Polaroid photograph of Heidi Allen that I
09:52:32 took.

09:52:32 **Q.** Now, the card that you took, you said it has some
09:52:42 information on there. What information does it
09:52:45 specifically have for Heidi on there?

09:52:46 **A.** It's got her name, address, phone number and date of
09:52:50 birth, Social Security card, code name, deputy working
09:52:55 with, height, weight, eye color, hair color, left
09:53:01 thumbprint, right thumbprint, date and case.

09:53:05 **Q.** Okay, the date on there, what is the date on there?

09:53:08 **A.** December eleventh, 1991.

09:53:11 **Q.** Okay, and it says -- you said something about deputy
09:53:13 working with. What if any information is typed there with
09:53:17 that?

09:53:18 **A.** It is left blank.

09:53:20 **Q.** Left blank. And then you said something about a

09:53:22 case. What does that mean?

09:53:23 **A.** Means any cases that that person was assisting us with we'd write the case number down so we could reference it in the future.

09:53:31 **Q.** Is there anything written down there?

09:53:33 **A.** No, there's not.

09:53:34 **Q.** Now, after you met with -- with Ms. Allen, did you arrange any kind of further meetings with her with yourself or any other members of the Sheriff's Department?

09:53:45 **A.** Yes, I did.

09:53:45 **Q.** And what was that?

09:53:46 **A.** I asked her if she would meet with at that time he was a deputy, Deputy Michael Anderson.

09:53:51 **Q.** And why was that?

09:53:53 **A.** I was relatively new to the ACT Team. I did not have much experience with the drug operations. Deputy Anderson at the time had more experience and I wanted her to meet with him in case he saw something that I did not.

09:54:08 **Q.** And to your knowledge, did that meeting take place?

09:54:12 **A.** Yes.

09:54:13 **Q.** After you met with her, did you ever meet with Heidi Allen again?

09:54:19 **A.** No.

09:54:19 **Q.** Did you ever receive any kind of communication from her other than a face-to-face meeting, phone call, letter, 09:54:26 anything?

09:54:27 **A.** No.

09:54:28 **Q.** Now, back in 1991 and ninety-two, what was your
09:54:34 patrol area if you remember?

09:54:36 **A.** I had two different patrol zones. It was either the
09:54:39 central portion of the county and/or the east portion of
09:54:42 the county.

09:54:42 **Q.** Where would the central portion of the county patrol
09:54:46 zone be?

09:54:47 **A.** It would start from the City of Oswego, go east to
09:54:50 the Village of Mexico, it would go south to the Town of
09:54:54 Schroeppel.

09:54:54 **Q.** Would it include the area at the intersection of 104
09:54:58 and 104B?

09:54:59 **A.** Yes, it would.

09:55:00 **Q.** Were you familiar with the D & W that was located
09:55:03 there?

09:55:03 **A.** Yes, I was.

09:55:04 **Q.** Why was that?

09:55:05 **A.** It was in my patrol zone. I worked the central
09:55:08 area.

09:55:08 **Q.** Now, when you were working on patrol, how generally
09:55:13 would you contact either other officers or the dispatch?

09:55:17 **A.** If it wasn't by radio, it was by a pay phone.

09:55:20 **Q.** Why a pay phone?

09:55:22 **A.** I didn't have a cell phone back then.
09:55:24 **Q.** And so if you were working and you needed to contact
09:55:29 dispatch by pay phone, why would you need to contact them
09:55:31 by phone rather than by radio?
09:55:33 **A.** In case there was stuff that they wanted to share
09:55:35 with me that they did not want everybody to hear over the
09:55:39 scanner.
09:55:39 **Q.** Did that happen often?
09:55:40 **A.** Yes.
09:55:41 **Q.** And where would you go to find a pay phone? Did you
09:55:46 have specific locations or did you just drive around till
09:55:48 you found one?
09:55:49 **A.** I knew where pay phones were located in my patrol
09:55:52 area.
09:55:52 **Q.** Did the D & W to your knowledge have a pay phone?
09:55:55 **A.** Yes, it did.
09:55:55 **Q.** Was that one of the spots you would regularly stop
09:55:58 at?
09:55:58 **A.** To use the phone, yes.
09:55:59 **Q.** Now, at some point in 1991 or 1992 did you discover
09:56:07 that you had dropped the card containing Heidi Allen's
09:56:11 information?
09:56:11 **A.** Yes, I did.
09:56:12 **Q.** Why -- why would you have had the card on you?
09:56:16 **A.** At that time we did not have assigned desk or work

09:56:19 areas. It was a common deputy area at the old Sheriff's Department so everybody had access to that. Basically we used our patrol cars as our desk.

09:56:27 **Q.** So when you say that, what do you mean? You used it as a desk. What would you do with your paperwork and things like that?

09:56:35 **A.** We would keep it inside the police car.

09:56:38 **Q.** Just randomly or how was it organized?

09:56:40 **A.** I had it organized in two different ways. The every day road patrol functions was in a hard case plastic seat organizer that was draped over the passenger front seat of the police car. The ACT Team work I kept in a soft bound leather-type case.

09:56:57 **Q.** Okay, and is that where you would have kept Heidi Allen's information?

09:57:01 **A.** Yes.

09:57:02 **Q.** How did you become aware that you had dropped the card back in 1991 or ninety-two?

09:57:09 **A.** I received a phone call at my residence.

09:57:10 **Q.** From whom if you know?

09:57:11 **A.** Deputy Montgomery.

09:57:13 **Q.** Do you remember time of day when you received the call?

09:57:18 **A.** No.

09:57:19 **Q.** And what did you tell Deputy Montgomery to do with

09:57:24 the information --

09:57:25 **A.** To --

09:57:25 **Q.** -- regarding the card?

09:57:26 **A.** To place it inside my mailbox which was located at
09:57:29 the Sheriff's Department.

09:57:30 **Q.** Why inside your mailbox?

09:57:32 **A.** I wasn't working. Again, I didn't have a place of
09:57:36 my own to put our files and that was somewhat secure.

09:57:41 **Q.** Somewhat secure meaning what?

09:57:43 **A.** The general public did not have access to our
09:57:45 mailboxes.

09:57:46 **Q.** And after he put it in there, did you ever take it
09:57:51 out of that mailbox?

09:57:52 **A.** No.

09:57:53 **Q.** Now at some point in 1994 on Easter did you become
09:58:01 aware that Heidi Allen had disappeared?

09:58:01 **A.** Yes.

09:58:02 **Q.** How did you become aware of that?

09:58:04 **A.** I was off duty, I received a phone call from
09:58:06 Sergeant Roy Lortie.

09:58:07 **Q.** And what if anything did you discuss with Mr. Lortie
09:58:11 with regard to Heidi Allen?

09:58:12 **A.** He asked me where the confidential informant
09:58:15 paperwork went on Heidi Allen.

09:58:17 **Q.** At that point in time did you have any idea what he

09:58:19 was talking about?

09:58:20 **A.** No.

09:58:20 **Q.** Why not?

09:58:21 **A.** I haven't spoke with her in several years.

09:58:24 **Q.** Okay, did something refresh your recollection?

09:58:28 **A.** Yes.

09:58:29 **Q.** What was that?

09:58:30 **A.** He refreshed my memory by saying it was Judge
09:58:34 Russell Sturtz's niece.

09:58:36 **Q.** And at that point you made the connection?

09:58:39 **A.** Yes.

09:58:39 **Q.** And what did you tell Roy Lortie or Sergeant Lortie
09:58:42 at that point?

09:58:43 **A.** That the paperwork was -- should be left, it was in
09:58:46 my mailbox.

09:58:47 **Q.** Now, at some point in time did you respond to work
09:58:55 either that day or within several days after that?

09:58:57 **A.** Yes.

09:58:57 **Q.** And did you become aware of where the Heidi Allen
09:59:01 investigation was centered right after she disappeared?

09:59:04 **A.** Yes.

09:59:04 **Q.** Where was that?

09:59:05 **A.** It was at the Town of New Haven Fire Department.

09:59:07 **Q.** And did you ever go to the town of New Haven fire
09:59:11 barn?

09:59:11 A. Yes.

09:59:11 Q. And if you remember, did you ever see anything regarding the card that you had on Heidi Allen at the town barn?

09:59:17 A. Yes.

09:59:18 Q. What did you see if you remember?

09:59:20 A. I was shown the card and the paperwork that was taken from my mailbox.

09:59:25 Q. And that's the same card that you identified there on that's in Exhibit B?

09:59:30 A. That's correct.

09:59:30 Q. I want to move forward a little bit now to December of 1994. Did you at some point during that time period have any other discussions with any other officers about what had happened with that card or were you asked to do anything with regard to that card?

09:59:49 A. Yes, I was.

09:59:50 Q. What was that?

09:59:50 A. To complete a report.

09:59:52 Q. And did you do so?

09:59:53 A. Yes.

09:59:54 Q. Do you remember did you do that on the same day that you were asked?

09:59:57 A. Yes, I did.

09:59:59 Q. I want to show you what's been marked as Defendant's

10:00:03 Exhibit 9 and ask you if you recognize that.

10:00:07 **A.** This is a photograph copy of the report that is date
10:00:10 stamped December ninth, 1994 that I completed.

10:00:14 **Q.** And when you say it's date stamped December ninth
10:00:18 1994, that's not a stamp you put on there is it?

10:00:22 **A.** No.

10:00:23 **Q.** Okay, did you state that -- excuse me, date that at
10:00:27 all?

10:00:27 **A.** No, I did not.

10:00:30 **Q.** Who -- if you remember, who asked you to prepare
10:00:32 this report?

10:00:33 **A.** It was a supervisor.

10:00:35 **Q.** Do you remember specifically who?

10:00:37 **A.** I don't remember which one.

10:00:39 **Q.** And you said you wrote that report up the same day.
10:00:44 Who did you turn it in if you remember?

10:00:46 **A.** It would have been a supervisor, either Sergeant
10:00:49 Lortie or Lieutenant Goodsell.

10:00:52 **Q.** Is that the only report that you ever wrote on Heidi
10:01:01 Allen's card after her disappearance?

10:01:04 **A.** On the card, yes.

10:01:05 **Q.** Okay, you did other things that you wrote a report
10:01:08 on regarding Heidi Allen's disappearance, is that accurate?

10:01:12 **A.** That is correct.

10:01:13 **Q.** Prior to her disappearance, did you ever write any

10:01:18 kind of documentation or report regarding finding the punch
10:01:21 card, or excuse me, finding the card at the D & W?

10:01:24 **A.** No, I did not.

10:01:26 **Q.** Other than the first meeting that you had with Heidi
10:01:35 Allen, did she ever provide you with any other information
10:01:38 or do any other work for you as any kind of -- with
10:01:42 relation to drugs or any other information?

10:01:43 **A.** No, she did not.

10:01:45 **Q.** Are you familiar with something referred to as a
10:01:54 punch card or punch card system?

10:01:56 **A.** Yes, I was, and am.

10:01:59 **Q.** Showing you what's been marked as exhibit --
10:02:07 Defendant's Exhibit 144, I'm going to ask you if you
10:02:10 recognize that, and I'll take all that stuff back.

10:02:26 **A.** Yes.

10:02:27 **Q.** And what is that?

10:02:28 **A.** It's a punch card that was completed by he was a
10:02:31 sergeant, First Sergeant John Cox dated January
10:02:35 twenty-third, 1992, date stamped 9:12.

10:02:39 **Q.** When you say date stamped 9:12, is that the date or
10:02:43 the time?

10:02:43 **A.** The -- that's the time, 9:12.

10:02:45 **Q.** What's the date?

10:02:46 **A.** January twenty-third, 1992.

10:02:49 **Q.** And how long is that after you met with Heidi Allen?

10:02:53 **A.** A little over a month.

10:02:56 **Q.** And how long is that in relation to when she disappeared in April, or excuse me, in April of 1994?

10:03:04 **A.** Over two years.

10:03:43 **Q.** Did you ever tell anyone about Heidi Allen's status as a confidential informant prior to her disappearance?

10:03:53 **A.** No, I did not.

10:03:54 **Q.** Did you ever have any conversations other than with members of the Sheriff's Department regarding her status as a confidential informant after her disappearance?

10:04:04 **A.** No, I did not.

10:04:07 **Q.** Do you know a gentleman by the name of Brian Mensch?

10:04:10 **A.** Yes, I do.

10:04:11 **Q.** How do you know him?

10:04:11 **A.** Used to be co-workers at a place of employment that I was working prior to getting hired with the Sheriff's Department.

10:04:17 **Q.** And where was that?

10:04:18 **A.** Ez Truck Stop.

10:04:19 **Q.** And you said prior to being hired by the Sheriff's Department. Can you give us the dates or approximate dates?

10:04:28 **A.** Yep. I worked at Ez Truck Stop after I graduated from college waiting to pass the Civil Service test. It would have been from 1985 to 1989 is when I was employed

10:04:39 there. I'm not sure of the years that he was employed.
10:04:42 **Q.** What'd you do there?
10:04:43 **A.** I was a fuel jockey.
10:04:45 **Q.** Okay, and you said that you -- you knew Mr. Mensch
10:04:50 through that job. Did you ever socialize with him outside
10:04:54 the job?
10:04:54 **A.** No, I did not.
10:04:55 **Q.** Once you became a deputy, did you ever see Mr.
10:04:58 Mensch either on, you know, in your job or at Ez Truck Stop
10:05:04 or anywhere?
10:05:05 **A.** Probably, yes, he was in the fire department.
10:05:09 **Q.** Are you familiar with a place called Champs bar?
10:05:12 **A.** Champs Corners, yes.
10:05:13 **Q.** Or Champs Corners, excuse me. How do you know that?
10:05:16 **A.** It's a place that I used to stop at once in a while.
10:05:19 **Q.** And did you ever conduct any kind of drug
10:05:22 investigations there?
10:05:23 **A.** No, we did not.
10:05:25 **Q.** Was there any particular reason why you know you
10:05:28 didn't?
10:05:29 **A.** 'Cause I knew the owner of the bar.
10:05:31 **Q.** And who was that?
10:05:32 **A.** It was Leo Richardson.
10:05:34 **Q.** And how did you know Mr. Richardson?
10:05:35 **A.** He was a deputy previous to my employment that I

10:05:41 knew.

10:05:41 **Q.** Did you ever see Mr. Mensch there?

10:05:45 **A.** I don't remember.

10:05:56 **Q.** Did you ever tell Brian Mensch that you were working with a confidential informant, any confidential informant? 10:05:58

10:06:03 **A.** No, I would not.

10:06:04 **Q.** Did you ever tell him anything about having a confidential informant? 10:06:07

10:06:09 MS. PEEBLES: Judge, it's leading.

10:06:11 THE COURT: I'll sustain it.

10:06:15 **Q.** Did you --

10:06:19 MR. MOODY: I have no further questions.

10:06:22 THE COURT: Ms. Peebles?

10:06:28 CROSS-EXAMINATION

10:06:28 BY MS. PEEBLES:

10:06:29 **Q.** Mr. VanPatten, I take it that you were relatively new with the anti-crime team back in 1991, is that your testimony? 10:06:59 10:07:06

10:07:06 **A.** That is correct.

10:07:07 **Q.** So you didn't have a lot of experience working with confidential informants? 10:07:09

10:07:12 **A.** That's correct.

10:07:13 **Q.** But you received some kind of training, I would assume you would have received some type of training before they threw you into that position, correct? 10:07:16 10:07:19

10:07:21 **A.** No, I did not.

10:07:22 **Q.** You received absolutely no training?

10:07:25 **A.** In regards to that, that is correct.

10:07:28 **Q.** So they just put you in the position of the anti-crime task force in a position to investigate narcotics and you had absolutely no training?

10:07:39 MR. MOODY: I'm going to object to the term "task force," Judge.

10:07:42 MS. PEEBLES: Team, I'm sorry.

10:07:45 **A.** We did more than just investigate illegal drug activities.

10:07:50 **Q.** Well, you did a lot of things that had to do with various vices as part of the anti-crime team, is that fair to say?

10:07:57 **A.** Yes.

10:07:57 **Q.** Now, you used confidential informants to infiltrate drug dealers, correct?

10:08:11 **A.** Yes.

10:08:12 **Q.** And in order to maintain the integrity of a confidential informant, you want to keep their identity a secret, correct?

10:08:21 **A.** Yes.

10:08:22 **Q.** In fact, a confidential informant would be rendered useless if their identity was somehow breached, is that a fair statement?

10:08:33 A. Yes.

10:08:34 Q. Is it also fair to say that if a confidential informant's identity is somehow breached and the wrong people find out, they're at risk, is that a fair statement?

10:08:52 MR. MOODY: Objection. Calls for speculation.

10:08:54 THE COURT: I think it's relevant to his knowledge.

10:08:58 A. Yes.

10:09:03 Q. Now I want to talk about Russell Sturtz. Do you remember on direct examination you indicated that that was Heidi Allen's uncle?

10:09:10 A. Yes.

10:09:11 Q. And he is the one who approached you about Heidi Allen, correct, that was his niece.

10:09:16 A. Yes.

10:09:17 Q. And you referred to him as a good friend of yours. Do you remember testifying about that on direct?

10:09:22 A. We were friends, yes.

10:09:23 Q. Yes. So on the morning Heidi Allen was abducted, you were contacted by Scruton, Investigator Scruton?

10:09:41 A. No.

10:09:42 Q. Goodsell?

10:09:43 A. No.

10:09:43 Q. Who contacted you, Lortie?

10:09:45 A. Sergeant Roy Lortie, yes.

10:09:48 **Q.** And when he mentioned Heidi Allen, you told him you had no idea what he was talking about, is that correct?

10:09:53 **A.** I didn't recognize her name, yes.

10:09:55 **Q.** But yet you were good friends with her uncle Russell Sturtz, and he's the one that told you that his niece might have information, drug information, correct?

10:10:07 **A.** Yes.

10:10:08 **Q.** Now when you went to talk to her, you went to her home, correct?

10:10:19 **A.** Yes.

10:10:20 **Q.** And her parents were home?

10:10:22 **A.** Yes.

10:10:22 **Q.** And they were aware that you took a photograph of her?

10:10:26 **A.** Yes.

10:10:27 **Q.** And you took thumbprints from her?

10:10:30 **A.** Yes.

10:10:30 **Q.** And you took those thumbprints at her home?

10:10:34 **A.** Yes.

10:10:34 **Q.** And they knew that you had taken her personal sensitive information that day, her parents knew that?

10:10:43 **A.** They were there.

10:10:44 **Q.** Was anyone else other than her parents present when you were there other than Sergeant Lortie?

10:10:51 **A.** Not that I recall.

10:10:53 **Q.** You had identified her as having a code name by the -- Julia Roberts, do you remember that?

10:11:07 **A.** Yes.

10:11:07 **Q.** And did she pick that or did you pick that?

10:11:10 **A.** She did.

10:11:13 **Q.** And you knew that day in December when you were getting all this information that Heidi Allen was not a drug user, is that fair to say?

10:11:26 **A.** Yes.

10:11:27 **Q.** Because if she used drugs or had any involvement with drug dealers, you wouldn't have used her, is that correct?

10:11:33 **A.** Based upon the age, if she did use drugs, that is correct.

10:11:40 **Q.** In fact, you submitted an affidavit in this case in support of the prosecution's motion that in fact if she was involved in using, buying or selling controlled substances, you would not have agreed to sign her up.

10:11:52 **A.** That's correct.

10:11:54 **Q.** Now, you indicated that you had referred Heidi Allen to Deputy Anderson?

10:12:13 **A.** Yes.

10:12:13 **Q.** He had more experience than you with working with confidential informants?

10:12:17 **A.** Yes.

10:12:17 **Q.** And were you aware that Heidi Allen actually met
10:12:22 with Deputy Anderson?

10:12:23 **A.** Afterwards, yes.

10:12:25 **Q.** And did Deputy Anderson tell you that he met with
10:12:28 her?

10:12:30 **A.** I don't remember how I found out.

10:12:31 **Q.** Did you know that she took her boyfriend Brett Law
10:12:35 with her to meet with Deputy Anderson?

10:12:39 MR. MOODY: Objection, Judge. A, it assumes
10:12:41 facts not in evidence, and B, I believe now we are
10:12:43 getting into an area of hearsay.

10:12:45 THE COURT: Well, I think you can ask the
10:12:47 question if he knew who was at the meeting, that's
10:12:49 fine.

10:12:50 **Q.** Do you know who was at the meeting?

10:12:50 **A.** No.

10:12:51 **Q.** Now and do you know whether it was a month after you
10:12:58 met with her in December, two months, do you know when that
10:13:01 meeting may have taken place?

10:13:03 **A.** I don't know.

10:13:04 **Q.** But it's your testimony that you were carrying Heidi
10:13:10 Allen's information, her sensitive confidential informant
10:13:13 information, in January, at the end of January of 1992?

10:13:18 **A.** Yes.

10:13:18 **Q.** So you had that information on you at that time,

10:13:21 correct?

10:13:21 **A.** Correct.

10:13:23 **Q.** In addition to Heidi Allen, how many other female
10:13:31 drug informants had you ever signed up, do you know?

10:13:35 MR. MOODY: Objection. Relevance, Judge.

10:13:36 THE COURT: Well, it might be relevant during
10:13:38 the time. Can we have a time frame?

10:13:40 MS. PEEBLES: During the early nineties,
10:13:41 during that time period.

10:13:43 MR. MOODY: I still object to the relevance,
10:13:44 Judge.

10:13:44 **Q.** Between 1991 when you signed up Heidi Allen and when
10:13:48 she was abducted in 1994, how many female drug informants
10:13:53 had you signed up?

10:13:54 THE COURT: I'll allow it.

10:13:55 **A.** I don't recall.

10:13:57 **Q.** In New Haven.

10:14:00 MR. MOODY: Objection, Judge, relevance. He
10:14:01 says he doesn't recall as well.

10:14:02 THE COURT: Sustained.

10:14:03 MS. PEEBLES: Well, if I say -- if I narrow it
10:14:06 to a location of New Haven, Your Honor, I think it
10:14:09 would be easier.

10:14:10 THE COURT: Does that help you?

10:14:11 **A.** I don't remember.

10:14:14 **Q.** Now, there was a central repository to keep informant files at the Sheriff's Department, correct?

10:14:25 **A.** I had no idea.

10:14:26 **Q.** You never had any conversations with Scruton about why the drug -- Heidi Allen's informant file was not in the locked secure informant repository on the day she was abducted?

10:14:37 **A.** Not that I remember, no.

10:14:39 **Q.** So it's your testimony that you don't remember Sergeant Lortie asking you why her file was not in the secure location where the other confidential informant files were kept?

10:14:55 **A.** No.

10:14:56 **Q.** Now you were involved in the initial stages of the investigation in Heidi Allen's disappearance, correct?

10:15:11 **A.** Yes.

10:15:11 **Q.** In fact, you met with Sergeant Lortie to search a mobile home across the street from the D & W?

10:15:18 **A.** I'm not sure if I did or not. I'd have to see some paperwork.

10:15:22 **Q.** Well, you did go to the D & W that morning, the morning Heidi Allen was abducted, correct?

10:15:28 **A.** I don't know if I went to the fire department or if I went to D & W or where my exact assignment was.

10:15:35 **Q.** But you went there with the documents that were

10:15:38 shown to you with Heidi Allen's informant information, you
10:15:40 actually went to the fire barn with that information on the
10:15:43 morning she was abducted, is that fair to say?

10:15:45 **A.** It was taken out of my mailbox. I saw it there at
10:15:49 the fire station.

10:15:49 **Q.** Okay, so you didn't personally take it to the fire
10:15:52 barn, somebody else did, but you actually saw it there that
10:15:54 morning, correct?

10:15:55 **A.** That's correct.

10:15:56 **Q.** Now, when you were called by Deputy Montgomery with
10:16:11 regard to the index card found in the parking lot of the
10:16:15 D & W, did you contact Heidi Allen to advise her that her
10:16:20 information had been dropped in the parking lot?

10:16:22 **A.** No.

10:16:23 **Q.** In fact, you didn't tell her parents did you?

10:16:28 **A.** No.

10:16:28 **Q.** And you never interviewed anyone from the D & W to
10:16:34 find out who may have seen her documents dropped in the
10:16:38 parking lot, is that fair to say?

10:16:40 **A.** Yes.

10:16:40 **Q.** And you would agree with me that exposing a
10:16:51 confidential informant's documents and identity in a
10:16:56 parking lot, a public parking lot, is a pretty serious
10:16:58 breach of the identity of a confidential informant, is that
10:17:02 a fair statement?

10:17:03 A. Potentially, yes.

10:17:06 Q. Now you indicated that you were going there to use a pay phone at the D & W, is that your testimony?

10:17:19 A. Yes.

10:17:20 Q. And you said that you had your soft leather case that you carried the informant documents, is that correct?

10:17:32 A. Yes.

10:17:33 Q. And then there was another case that you carried, it was a different type of briefcase with other information in it?

10:17:39 A. It was an organizer that went over the seat. It was not a briefcase.

10:17:43 Q. All right, so the organizer over the seat was where you had a bunch of your other documents or files that were pertinent to -- to you as a patrolman, is that correct?

10:17:51 A. That's correct.

10:17:52 Q. All right, and then this leather case you carried the index cards, what other information did you have in that leather case in January of 1992?

10:18:04 MR. MOODY: I'm going to object to the relevance, Judge.

10:18:06 THE COURT: Why's it relevant? It's the card we're talking about, nothing else.

10:18:10 MS. PEEBLES: Well, we're getting to that, Judge, because I'm trying to explore how Ms. Allen's

10:18:15 documents fell out of the briefcase. Were there other
10:18:17 documents in there or was he specifically handling
10:18:20 Heidi Allen's informant card.

10:18:22 THE COURT: Okay, you can answer the question.

10:18:24 **A.** Could you repeat that?

10:18:25 **Q.** Yes. Now you -- you had other documents I take it
10:18:30 in this leather briefcase?

10:18:32 **A.** Yes.

10:18:33 **Q.** And do you recall what other documents would have
10:18:35 been in there that would have been important for you when
10:18:38 you were using the pay phone on January of 1992.

10:18:43 **A.** Other active case files that I was currently
10:18:46 working.

10:18:47 **Q.** And would there have been other confidential
10:18:49 informant documents inside that briefcase?

10:18:53 **A.** Yes.

10:18:55 **Q.** And were you using the pay phone to make contact
10:18:58 with a confidential informant that day?

10:19:02 **A.** I have no idea.

10:19:06 **Q.** So it's possible that you could have been using
10:19:13 Heidi Allen's informant information on that day, pull it
10:19:18 out of your briefcase, and then somehow later you dropped
10:19:20 it, is that correct?

10:19:21 **A.** No.

10:19:22 MR. MOODY: Objection. Calls for speculation,

10:19:23 Judge.

10:19:23 THE COURT: No, it would be within his knowledge.

10:19:25 A. No.

10:19:27 Q. No that's not possible?

10:19:29 A. I didn't use any of her information she shared with me.

10:19:32 Q. My question was did you take those documents out of the bag that day before you dropped them in the parking lot.

10:19:41 MR. MOODY: Objection. That wasn't the question.

10:19:43 THE COURT: It wasn't but he can answer that question.

10:19:44 A. No.

10:19:46 Q. Do you know -- well, I guess the truth of the matter is you have no idea how you dropped those documents in the parking lot then, is that your testimony?

10:19:57 A. Yes.

10:19:58 Q. And you have no recollection about why you were there to use the pay phone, correct?

10:20:07 A. That's fair, yes.

10:20:10 Q. In addition to dropping her index card, you also dropped the names and phone numbers of individuals that she gave you information about, correct?

10:20:30 **A.** I don't remember exactly what I dropped other than the index card and I believe the photograph.

10:20:36 **Q.** Okay, so to your recollection, you only dropped the index card and the photograph?

10:20:41 **A.** Yes.

10:20:47 **Q.** And after you were made aware that you dropped this information in the parking lot, there was no followup investigation as to who found it and how long it had been in the parking lot, correct?

10:21:00 **A.** By me, no.

10:21:02 **Q.** By anybody?

10:21:04 **A.** I don't know.

10:21:06 **Q.** Have you seen any written report, document or statement which would have memorialized any followup investigation during that time period?

10:21:17 **A.** No.

10:21:18 **Q.** Did you ever have a conversation with Russell Sturtz about having dropped Heidi Allen's index card and information in the parking lot of the D & W back in 1992?

10:21:50 **A.** Not that I recall, no.

10:22:24 MS. PEEBLES: Just one moment, Judge.

10:22:25 THE COURT: Sure.

10:22:26 (Whereupon, there was a pause in the proceeding.)

10:22:33 **Q.** What shift were you working in January of 1992?

10:22:38 MR. MOODY: Objection. What day because --

10:22:40 THE COURT: I think you have to establish if
10:22:42 it's the same shift.

10:22:43 **Q.** Well, did your shift change from week to week, month
10:22:47 to month, year to year?

10:22:48 **A.** Week to week.

10:22:49 **Q.** So in January twenty-second of 1992, what shift were
10:22:52 you working?

10:22:52 **A.** I don't recall.

10:22:54 **Q.** Do you have any recollection of whether it was
10:22:59 nighttime when you were going there to use the pay phone?

10:23:02 **A.** No.

10:23:12 **Q.** What shifts would you typically work in 1992?

10:23:17 MR. MOODY: Objection "typically," Judge. He
10:23:19 said they change.

10:23:21 MS. PEEBLES: I'm trying to find out what
10:23:23 shift he worked. Did he work second shift, night
10:23:24 shift, only day shift or night shift.

10:23:26 THE COURT: Do you recall?

10:23:29 THE WITNESS: I remember the shifts we worked.

10:23:29 THE COURT: Answer the question.

10:23:30 THE WITNESS: We worked day shifts which was
10:23:31 like seven in the morning to three in the afternoon,
10:23:34 three to eleven, three in the afternoon to eleven at
10:23:36 night, and also the eight to four, eight at night to

10:23:39 four in the morning shift.

10:23:41 Q. And that fluctuated from week to week?

10:23:44 A. Yes.

10:23:44 Q. And you have no recollection what shift you were
10:23:46 working on January twenty-second of 1992?

10:23:48 A. Unless you show me my time sheet, no.

10:23:52 Q. Is it fair to say that you have no independent
10:24:01 recollection about when and how you dropped her information
10:24:06 in the parking lot of the D & W?

10:24:08 MR. MOODY: Objection. Asked and answered at
10:24:11 least twice.

10:24:11 THE COURT: Sustained.

10:24:11 MS. PEEBLES: I think we need clarification on
10:24:13 the record.

10:24:13 THE COURT: He answered the question twice.
10:24:15 It's on the record already.

10:24:23 MS. PEEBLES: One moment.

10:24:23 THE COURT: Sure.

10:24:24 (Whereupon, there was a pause in the
10:24:38 proceeding.)

10:24:38 Q. There were -- I guess I misunderstood your direct.
10:24:42 Did you say you had two briefcases or just one?

10:24:45 A. I had one briefcase and I had a hard cased seat
10:24:50 organizer that went over the front passenger seat.

10:24:54 Q. And was it the actual briefcase that you -- well, I

10:24:57 guess that's where I -- that's why I need to know. Do you
10:24:59 have a recollection of the day or night that you dropped
10:25:03 this information in the parking lot?

10:25:05 **A.** No.

10:25:06 **Q.** Zero.

10:25:08 **A.** Zero.

10:25:09 **Q.** So you don't know whether you actually had the whole
10:25:12 briefcase out of your car, the soft briefcase or not?

10:25:14 MR. MOODY: Objection. If he has no
10:25:16 recollection, he has no recollection. I mean --

10:25:18 THE COURT: Sustained.

10:25:18 MS. PEEBLES: No further questions.

10:25:20 THE COURT: Okay. Any redirect, Mr. Moody?

10:25:22 MR. MOODY: Yes, Judge.

10:25:24 REDIRECT EXAMINATION
10:25:24 BY MR. MOODY:

10:25:25 **Q.** You said that when you talked to Ms. Allen that you
10:26:05 did take some notes, is that accurate?

10:26:08 **A.** That's correct.

10:26:09 **Q.** Did you ever conduct any investigation or any
10:26:12 followup on any of the information that she gave you?

10:26:16 **A.** No, I did not.

10:26:17 **Q.** Why not?

10:26:18 **A.** This was all basically rumor mill that she heard.

10:26:22 MS. PEEBLES: Judge, I'm going to object.

10:26:24 We've already been down this road.

10:26:25 THE COURT: It's beyond the scope of cross.

10:26:29 MR. MOODY: But I think I can tie it in but
10:26:31 I'll go at it -- I'll ask the next question.

10:26:33 Q. You were asked some questions about when Heidi
10:26:36 disappeared if you contacted either Ms. Allen, or excuse
10:26:39 me, when the card was dropped if you contacted Ms. Allen or
10:26:42 her parents or Mr. Sturtz or anybody at the D & W, do you
10:26:46 remember those questions?

10:26:46 A. Yes.

10:26:47 Q. Was there any reason for you to be concerned at
10:26:53 having dropped the card --

MS. PEEBLES: Objection.

10:26:56 Q. -- at that point in time?

10:26:56 THE COURT: Is there an objection or not?

10:26:58 MS. PEEBLES: Sorry, no objection.

10:26:59 A. No.

10:27:00 Q. Why not?

10:27:01 A. She was never used in any capacity as far as
10:27:04 furthering the investigation to the drug activity.

10:27:07 Q. So in other words, to your knowledge, she never
10:27:10 provided any information that led to anything, right?

10:27:13 A. Nothing was used, correct.

10:27:15 Q. The information you got from her, or as far as you
10:27:18 know, the information that Anderson got from her, is that

10:27:20 accurate?

10:27:21 **A.** That is correct.

10:27:22 **Q.** Take this back now. Now, you were asked some
10:27:29 questions about the Investigator Ralph Scruton. Do you
10:27:37 know him?

10:27:37 **A.** Yes.

10:27:38 **Q.** And back in 1994 and in the early nineties he would
10:27:46 have been at what rank if you know?

10:27:48 **A.** Criminal investigator.

10:27:49 **Q.** Did the criminal investigator division, was that
10:27:53 separate from the ACT Team?

10:27:54 **A.** Yes.

10:27:55 **Q.** Did -- to your knowledge, did the Criminal
10:27:59 Investigations Division do their own drug investigations?

10:28:02 **A.** Yes.

10:28:02 **Q.** Would they have had their own confidential
10:28:05 informants then?

10:28:06 MS. PEEBLES: Judge, this is all leading.

10:28:08 THE COURT: Where was this raised on cross?

10:28:12 MR. MOODY: She asked questions about Ralph
10:28:13 Scruton, Investigator Scruton saying how come these
10:28:17 weren't in a certain area. What I'm trying to
10:28:18 establish is that the two units were different.

10:28:20 THE COURT: That's fine. Ask the question.

10:28:21 MS. PEEBLES: I think he can ask in a

10:28:23 non-leading manner.

10:28:24 THE COURT: That's my followup. Ask him in a
10:28:25 non-leading manner please.

10:28:27 MR. MOODY: I will do so. I apologize.

10:28:30 **Q.** To your knowledge, what were -- what were the
10:28:34 procedures for CID?

10:28:36 **A.** I had no idea back then.

10:28:39 **Q.** Would they have been any different than what the ACT
10:28:43 Team did?

10:28:44 MS. PEEBLES: Judge, he just said he had no
10:28:46 idea.

10:28:46 THE COURT: Sustained.

10:28:47 **Q.** As a member of the ACT Team, would you have shared
10:28:53 any of your informants with CID?

10:28:55 **A.** No.

10:28:58 **Q.** Now, you were asked some questions about the
10:29:06 affidavit you gave and about signing up Ms. Allen and
10:29:18 you -- and I want to show you --

10:29:20 MR. MOODY: Do you have his affidavit marked?
10:29:25 I --

10:29:25 MS. PEEBLES: I do have it marked and I'll
10:29:27 give it to you. Fifty-four.

10:30:04 **Q.** Do you remember being asked those questions about
10:30:11 that you didn't sign Ms. Allen up, and I believe the
10:30:16 question was that if she had used -- if she had been

10:30:18 involved in using, buying controlled substances, you
10:30:21 wouldn't have used her, right, do you remember that?

10:30:23 **A.** Yes.

10:30:24 **Q.** I want to show you your affidavit. Is that -- was
10:30:27 there more to that statement?

10:30:30 THE COURT: You make a reference.

10:30:32 **Q.** I just want to refresh your recollection if there is
10:30:34 more to that statement.

10:30:35 MS. PEEBLES: Judge, he didn't say he needed
10:30:37 his memory refreshed.

10:30:39 THE COURT: That's what I'm wondering.

10:30:40 **Q.** I apologize. Do you remember if there was more than
10:30:42 that statement?

10:30:42 **A.** I'd have to reference the document to confirm my
10:30:46 memory.

10:30:46 **Q.** I want to direct your attention to paragraph eleven.

10:30:49 THE COURT: Paragraph eleven what page?

10:30:51 MR. MOODY: I believe it's the second, goes
10:30:52 over to the third.

10:31:02 **Q.** Was there more to that statement, does that refresh
10:31:04 your recollection?

10:31:05 **A.** Yes.

10:31:05 **Q.** What was more to that statement?

10:31:07 **A.** Can I read what I wrote?

10:31:08 **Q.** Well, if that refreshes your recollection, I'd

10:31:11 rather you not read what you wrote.

10:31:14 **A.** Based upon me not having any direct knowledge that
10:31:15 she was involved with buying, selling illegal drugs as well
10:31:19 as her age, she would not have been signed up as a
10:31:22 confidential informant.

10:31:24 **Q.** A confidential informant who has no knowledge of --
10:31:27 of drugs, would they be of any use to you in the drug
10:31:30 investigation?

10:31:31 MS. PEEBLES: Objection, leading.

10:31:32 THE COURT: I'll allow it.

10:31:34 **A.** No.

10:31:35 **Q.** If you had a confidential informant who had
10:31:41 previously used drugs, would you use them?

10:31:46 **A.** Yes.

10:31:46 **Q.** Why?

10:31:47 **A.** Because they were in the illegal drug activity scene
10:31:52 and they would have direct knowledge.

10:31:55 **Q.** In other words, you kind of take a thief to catch a
10:32:00 thief?

10:32:01 **A.** Yes.

10:32:01 MS. PEEBLES: Objection.

10:32:02 THE COURT: Sustained.

10:32:03 **Q.** You were asked some questions about the ACT Team and
10:32:10 you investigated -- I believe the question was you
10:32:12 investigated various vices. Did you do other things

10:32:15 besides drugs?

10:32:16 **A.** Yes.

10:32:17 **Q.** What else did you do?

10:32:18 **A.** When we worked --

10:32:19 MS. PEEBLES: Objection, relevance.

10:32:21 THE COURT: Well, already answered, too, so
10:32:23 I'll sustain it on it's already been asked and
10:32:27 answered.

10:32:27 **Q.** You were asked some questions about followup
10:33:05 investigation and whether or not you ever responded to the
10:33:10 D & W to investigate anything like this. Do you remember
10:33:12 those questions?

10:33:13 **A.** Yes.

10:33:13 **Q.** Did you ever respond to the D & W at any time
10:33:17 between December of 1991 and when Heidi Allen disappeared
10:33:23 with regard to anything involving Heidi Allen?

10:33:25 **A.** No.

10:33:26 **Q.** Did you ever -- do you know -- would -- did Heidi
10:33:30 Allen live in the central region, the central zone to your
10:33:36 knowledge?

10:33:36 **A.** Yes, she did.

10:33:37 **Q.** Did you ever respond -- you worked central, right?

10:33:41 **A.** That's correct.

10:33:41 **Q.** Did you ever respond to anything --

10:33:43 MS. PEEBLES: Judge, objection. Leading.

10:33:48 MR. MOODY: I'm just --

10:33:49 MS. PEEBLES: Where is he going?

10:33:50 MR. MOODY: I'm just trying to establish foundation. 10:33:51

10:33:51 THE COURT: Establish it quickly and then ask a non-leading question please. 10:33:53

10:33:55 **Q.** During the time period of 1991 to when Heidi Allen disappeared, did you ever have any response to anything involving Heidi Allen during that time period? 10:33:58 10:34:02

10:34:06 **A.** No.

10:34:07 **Q.** Did you ever have any information that made you concerned about Heidi Allen's safety during that time period? 10:34:12 10:34:14

10:34:15 MS. PEEBLES: Objection.

10:34:15 THE COURT: That's too leading, Mr. Moody. Sustained. 10:34:18

10:34:19 **Q.** Besides the pay phone at the D & W, did you have other pay phones that you regularly used while you were on patrol? 10:34:33 10:34:35

10:34:36 **A.** Yes.

10:34:36 **Q.** And you were asked some questions about what you kept in the case where you kept the CI card that Heidi was, is that accurate? 10:34:39 10:34:45

10:34:46 **A.** Yes.

10:34:47 **Q.** Do you remember those questions? You had other CI

10:34:50 information cards in there?

10:34:51 A. Would have been, yes.

10:34:53 Q. And you said something about active investigations.
10:34:59 Do you remember those questions?

10:35:00 A. Yes.

10:35:00 Q. Were any of those active investigations that you had
10:35:03 on you in -- when you dropped the card involving Heidi
10:35:06 Allen?

10:35:07 MS. PEEBLES: Objection. He couldn't answer
10:35:09 any of my questions concerning what was in the
10:35:11 briefcase.

10:35:12 THE COURT: He answered generally, so I have
10:35:15 difficulty if he's going to answer specifically, so
10:35:17 I'll sustain the objection.

10:35:47 MR. MOODY: I have nothing further, Judge.

10:35:48 THE COURT: Ms. Peebles?

10:35:49 MS. PEEBLES: Just a few followup questions.

10:35:51 THE COURT: Sure.

10:35:51 RECROSS-EXAMINATION

10:35:52 BY MS. PEEBLES:

10:35:53 Q. Deputy VanPatten, you -- you already indicated you
10:36:11 agreed with me that the information that was dropped in the
10:36:16 parking lot was sensitive information, right?

10:36:19 A. Yes.

10:36:20 Q. And it's fair to say that somebody who stumbles upon

10:36:26 this information would have no idea what Heidi Allen was doing at the Sheriff's Department with you, is that correct?

10:36:33 **A.** Yes.

10:36:35 **Q.** So it wouldn't matter whether or not you were actively using her at the time when that information was found in the parking lot regarding the breach of her identity, correct?

10:36:48 MR. MOODY: Objection. I don't even understand the question, Judge.

10:36:51 THE COURT: I do. Do you understand the question?

10:36:51 THE WITNESS: No.

10:36:54 **Q.** Let me rephrase it. The mere fact that you are testifying here today that she was not being actively used at that time as an informant would not have been obvious to anyone who picked up the information that found it in the parking lot, is that a fair statement?

10:37:14 **A.** Yes.

10:37:15 **Q.** And based on the information that was found in the parking lot, no one would have any idea what her status was, correct?

10:37:26 **A.** Yes.

10:37:39 **Q.** And do you know whether Heidi Allen was working at the D & W when her information was found in the parking

10:37:53 lot?

10:37:55 **A.** I do not know.

10:37:58 **Q.** So is it fair to say that it's rather insignificant
10:38:14 whether or not Heidi Allen was being actively used as an
10:38:18 informant when that information was found in the parking
10:38:21 lot of the D & W?

10:38:22 MR. MOODY: Objection. Rather insignificant
10:38:24 is a determination for Your Honor.

10:38:26 THE COURT: I'll sustain it. Could you
10:38:28 rephrase the question please?

10:38:30 **Q.** Well, if a drug dealer found her information lying
10:38:46 in the parking lot of the D & W or learned about that
10:38:49 information, obviously they would be a little concerned
10:38:53 about her acting as an informant, fair?

10:38:56 MR. MOODY: Objection. Speculation. I don't
10:38:58 think we can even link a drug dealer to Heidi Allen.

10:39:01 THE COURT: Sustained.

10:39:01 **Q.** Well, you testified on redirect that you frequently
10:39:04 used drug dealers as informants at times to infiltrate,
10:39:09 correct?

10:39:09 MR. MOODY: Objection. I don't think he said
10:39:11 drug dealers, I think he said people who used drugs.

10:39:14 THE COURT: Use drugs, yes, to just use that.
10:39:18 He didn't say drug use, he said people that use drugs.

10:39:21 **Q.** All right, so you would at times use individuals

10:39:25 that had drug issues to assist as a confidential informant,
10:39:30 correct?

10:39:31 **A.** Yes.

10:39:31 **Q.** And is it fair to say that when you're signing up a
10:39:34 confidential informant, particularly -- well, strike that.
10:39:39 Is it fair to say when you're signing up a confidential
10:39:41 informant, they often have concerns about maintaining the
10:39:45 confidentiality of their identity, correct?

10:39:48 **A.** Yes.

10:39:48 **Q.** And it's pretty obvious why, correct?

10:39:53 MR. MOODY: Objection. Pretty obvious is --

10:39:56 THE COURT: I'll allow it.

10:39:57 **A.** Yes.

10:39:57 **Q.** And why?

10:40:00 **A.** So no --

10:40:01 MR. MOODY: Judge, objection. I thought it
10:40:02 was pretty obvious. I mean if it's pretty obvious he
10:40:05 wouldn't need to answer.

10:40:06 **Q.** All right, I'll restate the question. Their concern
10:40:12 for their own safety, correct?

10:40:14 **A.** That would be one of them, yes.

10:40:17 MS. PEEBLES: No further questions.

10:40:20 THE COURT: Mr. Moody?

10:40:38 (Whereupon, there was a pause in the
proceeding.)

10:40:48 REDIRECT EXAMINATION

10:40:49 BY MR. MOODY:

10:40:51 **Q.** You were asked some -- you were asked some questions about whether anyone could tell the status of the -- of Heidi Allen from the card. Do you remember those questions?

10:41:09 **A.** Yes.

10:41:10 **Q.** Does the card say that Heidi Allen was a confidential informant?

10:41:14 **A.** No.

10:41:14 **Q.** Does it say that she had any kind of information on drugs?

10:41:18 MS. PEEBLES: Objection.

10:41:19 **A.** No.

10:41:19 MS. PEEBLES: Objection.

10:41:20 THE COURT: Hold on. What was the objection?

10:41:21 MS. PEEBLES: Well, the documents are in evidence and those are leading questions.

10:41:25 THE COURT: Leading question. I'll allow the question if you can make it non-leading.

10:41:29 **Q.** Does the document itself give any indication of what her status is?

10:41:34 **A.** No.

10:41:37 MR. MOODY: No further questions.

10:41:42 THE COURT: Ms. Peebles?

10:41:44 MS. PEEBLES: No further questions, Judge.

10:41:45 THE COURT: Sir, you can step down. Okay, we have been at this for two hours. Ten-minute break? Be back at five of eleven.

10:53:44 (Whereupon, there was a recess.)

10:55:29 THE COURT: Mr. Moody, Mr. Oakes, ready?

10:55:31 MR. OAKES: Yes, Your Honor.

10:55:33 THE COURT: Ms. Peebles, Ms. Bianco? Call your next witness.

10:55:37 MR. MOODY: People call Michael Anderson.

MICHAEL ANDERSON, Called as a witness, having been duly sworn, was examined and testified as follows: 10:56:14

10:56:14 THE CLERK: Please state your name for the record.

10:56:17 THE WITNESS: Michael Anderson.

10:56:18 THE CLERK: Spell your last name.

10:56:19 THE WITNESS: A-N-D-E-R-S-O-N.

10:56:23 THE COURT: Mr. Anderson, before we start, I'm going to ask you do you consent to having your testimony audio and videotaped?

10:56:28 THE WITNESS: I do not.

10:56:34 THE COURT: Mr. Moody, whenever you're ready.

10:56:43 MR. MOODY: Thank you.

DIRECT EXAMINATION

10:56:45 BY MR. MOODY:

10:56:45 Q. Are you employed, sir?

10:56:46 A. Pardon me?

10:56:47 Q. Are you employed?

10:56:47 A. Yes, I am.

10:56:48 Q. And by whom?

10:56:49 A. Currently?

10:56:50 Q. Yes.

10:56:51 A. James A. Fitzpatrick Nuclear Power Plant.

10:56:54 Q. How long have you worked up there?

10:56:56 A. Six and a half years.

10:56:57 Q. And prior to working at the Fitzpatrick plant, did
10:57:00 you work anywhere else?

10:57:01 A. Oswego County Sheriff's Department.

10:57:03 Q. And how long did you work for the Oswego County
10:57:06 Sheriff's Department?

10:57:06 A. Just over twenty years.

10:57:08 Q. Do you remember from when to when?

10:57:09 A. August eighth of 1988 till August twenty-first of
10:57:13 2008.

10:57:14 Q. And what was the highest rank you achieved?

10:57:21 A. Investigator.

10:57:22 Q. How long were you an investigator with the Sheriff's
10:57:25 Department?

10:57:25 A. Approximately twelve years.

10:57:26 Q. I want to direct your attention to 1991 and 1992.

10:57:35 Were you -- what was your -- what were your duties with the
10:57:38 Sheriff's Department at that point in time?

10:57:39 **A.** I was a deputy sheriff assigned to the road patrol.

10:57:43 **Q.** And besides being assigned to the road patrol, did
10:57:47 you have any other assignments or any other duties?

10:57:49 **A.** We were on an anti-crime team, they called it the
10:57:51 ACT Team, investigated burglaries and underage drinking,
10:57:58 minor drug infractions, whatever was going on at the time.

10:58:00 **Q.** And did you -- how long were you a member of the ACT
10:58:07 Team?

10:58:07 **A.** Approximately three years.

10:58:08 **Q.** Do you remember anyone else who was involved with
10:58:11 the ACT Team around that time?

10:58:13 **A.** At the time Investigator VanPatten.

10:58:16 **Q.** Was he an investigator then?

10:58:18 **A.** No, Deputy VanPatten, Deputy Hoyt, I think Deputy
10:58:25 Dix (ph) was involved, Deputy Corfus (ph), it fluctuated
10:58:29 people in and out.

10:58:30 **Q.** Do you remember who was in charge of it back in
10:58:32 1981?

10:58:33 **A.** I believe Sergeant Lortie was just put in charge of
10:58:37 it.

10:58:37 **Q.** Now to your knowledge, was there any other group of
10:58:42 people that investigated drug crimes in the -- for the
10:58:46 Sheriff's Department?

10:58:47 **A.** The main group that did that was the criminal
10:58:49 investigators. We were kind of just -- if there was
10:58:51 burglaries in the area they'd put us there. If they got a
10:58:54 complaint of underage drinking, you know, the minor leagues
10:58:56 of, you know, the things that weren't really important to
10:58:59 them, they would try to let us cultivate.
10:59:02 **Q.** And as part of a member of the ACT team, would you
10:59:06 occasionally use people who gave you information on drug
10:59:11 stuff to keep their identities confidential?
10:59:15 **A.** Yes.
10:59:15 **Q.** Sometimes referred to as confidential informants?
10:59:17 **A.** Yes.
10:59:17 **Q.** Does -- can you describe are there different types
10:59:22 of confidential informants?
10:59:24 **A.** There is people who just merely give information.
10:59:26 There is people that have -- are in a position to give you
10:59:31 specific names, locations. There's people that are in
10:59:35 specific position to introduce an undercover, to make buys
10:59:37 on their own, so it's all different levels.
10:59:46 **Q.** And you would meet with all types of -- all of those
10:59:49 types of people?
10:59:49 **A.** Yes.
10:59:50 **Q.** Now, the -- you mentioned that Deputy VanPatten was
10:59:56 a member of the ACT Team. At some point in time did Deputy
11:00:00 VanPatten ask you to meet with Heidi Allen?

11:00:02 A. He did.

11:00:02 Q. How did that come about?

11:00:04 A. I believe he had to work the road patrol that day, 11:00:07 best of my recollection, and he said, you know, I was good 11:00:09 at interviewing people, I believe him and Sergeant Lortie 11:00:12 asked me going to come to the office, could you be there 11:00:15 and debrief, that's what we call it, a debrief.

11:00:18 Q. Do you know whether or not Deputy VanPatten or 11:00:22 Sergeant Lortie had already spoken with her?

11:00:24 A. I believe they had initially spoken with her at her 11:00:27 house.

11:00:28 Q. And did you speak with Heidi Allen?

11:00:33 A. I did.

11:00:33 Q. Where did you speak with her?

11:00:35 A. At the Oswego County Sheriff's Department, the old 11:00:37 Sheriff's Department which would be where the DMV is now.

11:00:42 Q. And where in that building did you meet with her if 11:00:45 you remember?

11:00:45 A. I do not specifically remember. The best of my -- 11:00:48 we would use the deputies' room or we would use the 11:00:51 investigator room if it was open and they weren't there.

11:00:53 Q. Do you remember specifically a date or a month that 11:00:56 you met with her?

11:00:57 A. I do not. I know there's a report.

11:01:02 Q. When you said there is a report, is that the report

11:01:05 that you did in December of ninety-four?

11:01:07 **A.** That is correct.

11:01:08 **Q.** We'll get to that in a minute, but when you met with
11:01:11 her, did she come in and talk to you alone?

11:01:14 **A.** No.

11:01:14 **Q.** Who else was with her if you know?

11:01:16 **A.** Her boyfriend at the time.

11:01:18 **Q.** And do you know his name?

11:01:19 **A.** Brett Law.

11:01:20 **Q.** Did you know either of those individuals before you
11:01:23 met with them?

11:01:24 **A.** I did not.

11:01:25 **Q.** Whose idea was it to have Mr. Law in on this
11:01:31 meeting?

11:01:31 **A.** It was Heidi's.

11:01:32 **Q.** Did you have any concerns about that?

11:01:34 **A.** I never interview someone that's going to give me
11:01:38 anything of substance with anyone else in the room but she
11:01:41 insisted.

11:01:43 **Q.** When he was in on -- when he was there for the --
11:01:48 for this meeting, did he offer any information or did he
11:01:52 provide any information?

11:01:52 **A.** No, sir.

11:01:53 **Q.** You just spoke just to Heidi then?

11:01:56 **A.** He was in the room, the conversation was mostly

11:01:58 directed at Heidi, but there was -- there was no substance to any of the conversation.

11:02:03 **Q.** When you say there's no substance to the conversation --

11:02:05 THE COURT: Hold on. Which conversation, with the boyfriend or --

11:02:08 MR. MOODY: I was getting to that.

11:02:09 **Q.** When you say the conversation, you're talking about the conversation between you and Heidi?

11:02:12 **A.** And Brett, he was in the room, so the three of us were having a conversation.

11:02:17 **Q.** With regard to the information that you got from Heidi, can you describe that for me?

11:02:23 **A.** It was -- I would -- the best way I could describe it as kid stuff. One of my friends is getting into drugs. Can I get a name. No. I'm not going to give you the name. Do you do drugs. No. So you can't purchase any drugs. No. Do you know where anybody's doing -- selling drugs. No. I just -- I'm at parties sometimes and I see my friends are getting involved and I don't like it. That was it.

11:02:44 **Q.** Now you said she -- you asked her for names. Did she ever give you any names?

11:02:50 **A.** No.

11:02:51 **Q.** If you recollect, how many times did you ask her for

11:02:54 names?

11:02:54 A. Quite a bit. That's the main point of the 11:02:57 interview. I want to see who I can target, who I can go 11:03:00 after, who I can, you know --

11:03:02 Q. Do you remember how long you met with her?

11:03:04 A. I would roughly say fifteen minutes; fifteen, twenty 11:03:09 minutes tops.

11:03:10 Q. And after you -- you met with her, what if anything 11:03:13 did you decide to do with -- with Heidi Allen as regards to 11:03:17 whatever information she had?

11:03:19 A. My part was just to interview her to see if there's 11:03:22 anything that we could use. I got ahold of Deputy 11:03:27 VanPatten and told him this is going nowhere, absolutely 11:03:30 nowhere, just an informational thing. This wasn't even a 11:03:32 location, it was just at parties, it was very general 11:03:36 information.

11:03:38 Q. And if you know, approximately how old was she at 11:03:41 the time you met with her?

11:03:42 A. I believe around eighteen. Maybe less. That was 11:03:45 also a concern.

11:03:50 Q. After you met with her that one time, did you ever 11:03:54 meet with her again?

11:03:55 A. No.

11:03:56 Q. And you said that you talked to Deputy VanPatten 11:04:01 after the meeting?

11:04:02 **A.** Yes.

11:04:02 **Q.** Was that the only time you talked to Deputy VanPatten about Heidi Allen was that one time after the meeting with regard to whatever information she had?

11:04:11 **A.** Yes. We -- we discussed it and it was going nowhere, there was no sense in wasting any police time on it.

11:04:18 **Q.** When you -- moving now forward to April of ninety-four, obviously you were still with the Sheriff's Department at that point in time?

11:04:27 **A.** Correct.

11:04:27 **Q.** And you became aware that Heidi Allen had disappeared.

11:04:30 **A.** Yes.

11:04:31 **Q.** At some point in time were you asked to give any kind of report or statement with regard to your meeting with Heidi Allen?

11:04:39 **A.** Yes.

11:04:40 **Q.** Do you remember when that was?

11:04:41 **A.** December of -- I don't -- ninety-four.

11:04:50 **Q.** Showing you what's been marked as and received as Defendant's Exhibit 10 and ask you if you recognize that.

11:04:57 **A.** Yes, that's the report that I typed up.

11:05:00 **Q.** Okay, do you remember who asked you to type that report up?

11:05:03 **A.** I believe Sergeant Lortie and Investigator Whipple.

11:05:07 **Q.** Okay, do you -- do you remember did you do this report the same day you were asked to do it?

11:05:14 **A.** Yes.

11:05:14 **Q.** What did you do with it after you typed it up?

11:05:18 **A.** Gave it to Investigator Whipple.

11:05:20 **Q.** Okay, and is there a date stamp that's on that document?

11:05:27 **A.** December ninth, 1994.

11:05:29 **Q.** Did you put that date stamp on there?

11:05:31 **A.** No, sir.

11:05:32 **Q.** Did you date it at all?

11:05:34 **A.** I did not.

11:05:36 **Q.** Other than this report Exhibit 10, did you ever do any other reports or any other statements regarding your conversation with Heidi Allen?

11:05:49 **A.** No.

11:05:50 **Q.** To your knowledge was -- was Heidi Allen ever -- did she ever provide any more information to your knowledge to any other deputies?

11:06:03 **A.** No, not to my knowledge.

11:06:05 **Q.** Besides Deputy VanPatten, did you ever speak with anyone else regarding the information that Heidi Allen gave to you or whatever your conversation with Heidi Allen I should say.

11:06:44 **A.** I believe Sergeant Lortie and I and Deputy VanPatten
11:06:49 discussed it.

11:06:49 **Q.** And Sergeant Lortie would have been your supervisor
11:06:52 at the time?

11:06:52 **A.** Yes.

11:06:56 **Q.** Anybody else besides Deputy VanPatten and Sergeant
11:07:00 Lortie?

11:07:00 **A.** No.

11:07:01 MR. MOODY: I have no further questions,
11:07:03 Judge.

11:07:03 MR. OAKES: Your Honor --

11:07:04 MR. MOODY: Oh, excuse me.

11:07:06 (Whereupon, there was a pause in the
11:07:14 proceeding.)

11:07:14 **Q.** After you met with Heidi Allen, after you finished
11:07:19 the meeting with Heidi Allen, did you give her any
11:07:21 information about how to get ahold of you if she had any
11:07:24 other information?

11:07:24 **A.** No. She had information how to get ahold of Deputy
11:07:27 VanPatten. I was merely there to do the interview and
11:07:30 assess.

11:07:30 **Q.** So you never had any further contact with Heidi
11:07:33 Allen?

11:07:34 **A.** No.

11:07:34 **Q.** Between the time you met with her in ninety-one and

11:07:38 when she disappeared, did you ever hear anything about
11:07:41 Heidi Allen?

11:07:43 A. No.

11:07:43 MS. PEEBLES: Objection, leading.

11:07:44 THE COURT: Sustained.

11:07:56 Q. When Heidi Allen disappeared in 1994, did you
11:07:59 remember meeting with her?

11:08:01 A. Yes.

11:08:21 MR. MOODY: I have no further questions,
11:08:23 Judge.

11:08:23 THE COURT: Ms. Peebles?

11:08:24 MS. PEEBLES: Yes.

11:08:26 CROSS-EXAMINATION

11:08:26 BY MS. PEEBLES:

11:08:27 Q. Mr. Anderson, I'm going to ask you some questions
11:09:01 about working on the ACT Team, do you understand?

11:09:06 A. Yes. I can barely hear you, ma'am. I have some
11:09:09 hearing issues.

11:09:10 Q. I will speak up.

11:09:11 A. Thank you.

11:09:12 Q. Now, when you became a member of the ACT Team, you
11:09:16 became a member in what year?

11:09:18 A. Roughly 1990.

11:09:21 Q. And you received training in connection with your
11:09:26 membership in this ACT team?

11:09:29 **A.** To specifically train?
11:09:31 **Q.** With regard to working with confidential informants.
11:09:34 **A.** Not specifically. In the police academy they teach
11:09:38 you things like that.
11:09:39 **Q.** And you had more experience working with
11:09:41 confidential informants than Deputy VanPatten?
11:09:44 **A.** Perhaps.
11:09:45 **Q.** Is that fair to say? And that's the reason why they
11:09:48 wanted you to -- to meet with Heidi Allen?
11:09:51 **A.** Yes, and he was busy, I believe he was busy on the
11:09:53 road that day. See, we would have to work road patrol some
11:09:57 days of the week, and then other days of the week we could
11:09:59 investigate different things.
11:10:00 **Q.** Now when you met with Heidi Allen, did you know that
11:10:04 Deputy VanPatten had already created an index card with her
11:10:09 thumbprints, pedigree information and she had been assigned
11:10:12 a code name?
11:10:15 **A.** The time frame would escape me but I eventually
11:10:19 knew, yes.
11:10:19 **Q.** Was that before or after you spoke with her?
11:10:22 **A.** He met with her prior to our conversation.
11:10:25 **Q.** All right, and before you met with Heidi Allen, were
11:10:28 you aware that he had done all of this, taken her
11:10:32 photograph and fingerprints and pedigree information?
11:10:35 **A.** I was aware that he met and spoke with her. I

11:10:39 couldn't say if I was aware of he did all that. I was
11:10:42 aware that he spoke with her and set up the meeting to come
11:10:45 and speak with me.

11:10:46 **Q.** Were you aware that she had provided names of
11:10:49 individuals in connection with dealing speed?

11:10:53 **A.** I was not aware of that.

11:10:55 **Q.** Were you aware that she had provided a name and
11:10:58 phone number or address for an individual that she believed
11:11:02 was dealing in acid?

11:11:04 **A.** Provided to who?

11:11:05 **Q.** To Deputy VanPatten.

11:11:07 **A.** No, I was not.

11:11:08 **Q.** So specific names and numbers you had no knowledge
11:11:12 of, is that fair to say?

11:11:14 **A.** That's correct.

11:11:14 **Q.** Now, when you said you met with Heidi Allen, did you
11:11:19 write or memorialize that meeting with regard to the
11:11:23 information that she provided you?

11:11:24 **A.** I did not. There was nothing significant to write
11:11:27 down other than I mean anyone could walk in this room and
11:11:31 tell me I know there is a house down the street dealing
11:11:34 drugs or this person's doing drugs. There was nothing.

11:11:38 **Q.** Now, were you aware that Deputy VanPatten was
11:11:44 carrying her confidential informant information with him
11:11:48 during road patrol in January of 1992?

11:11:51 A. I was not aware that he was doing that. You as a course of business you keep your patrol car however you want to keep your patrol car where you keep your paperwork.

11:12:00 Q. Well, that wasn't my question. My question was were you aware that he was carrying around Heidi Allen's index card with all the pedigree information, her photograph and the drug information she had provided to him?

11:12:10 A. No.

11:12:11 Q. Now, you worked with informants?

11:12:14 A. Correct.

11:12:15 Q. As a member of the ACT Team, correct?

11:12:18 A. Correct.

11:12:19 Q. In fact, you probably had a lot of involvement with working with informants?

11:12:23 A. A few.

11:12:24 Q. And you would agree with me that maintaining the confidentiality of the identity of an individual who was working with you would be important, correct?

11:12:35 A. Of course.

11:12:36 Q. And you would agree with me that disclosing this information to the general public would create a danger or potential danger to the individual, is that fair to say?

11:12:49 A. Generally speaking, yes.

11:12:53 Q. And if that information was compromised or her identity was compromised within a month of providing it,

11:13:02 she would pretty much be rendered useless, is that fair to
11:13:05 say?
11:13:07 **A.** It would depend on who it was disclosed to and what
11:13:10 form it was disclosed. If it's a public forum, absolutely.
11:13:14 **Q.** So if it's disclosed in a public forum, she's
11:13:17 useless, correct?
11:13:20 **A.** Not -- not necessarily all the time, but okay.
11:13:23 **Q.** But it would be a problem.
11:13:25 **A.** If -- if I disclose your name for instance and you
11:13:28 came to me a month later and said hey, I know who did a
11:13:31 burglary and I can prove they did it because here's the
11:13:34 stollen things, could I still use that? Absolutely.
11:13:36 **Q.** Well, would you think it would be important for the
11:13:41 confidential informant to be told that their identity had
11:13:44 been compromised?
11:13:45 **A.** If they were an active confidential informant,
11:13:49 absolutely.
11:13:50 **Q.** How about within a month of creating the documents?
11:13:55 MR. MOODY: Objection.
11:13:56 **Q.** Important --
11:13:57 MR. MOODY: I believe he said it was active.
11:13:58 I mean it wouldn't have been a time, would have been an
11:14:01 active --
11:14:01 THE COURT: Well, she can ask that question,
11:14:03 it wouldn't depend on time or not.

11:14:05 **Q.** Say the documents are created and a month later
11:14:08 exposed. Useless?
11:14:14 MR. MOODY: Objection. That calls for
11:14:15 speculation.
11:14:16 THE COURT: Well, it's a different question.
11:14:17 I -- you asking does that render the CI useless or does
11:14:21 it expose them to danger? What was the first question?
11:14:24 **Q.** Well, okay. You agree with me that it would expose
11:14:26 them potentially to danger, correct?
11:14:28 **A.** Generally.
11:14:29 **Q.** Yeah, okay, and within a month of having this
11:14:33 information created, it's in the general public, she would
11:14:37 pretty much be rendered useless, correct?
11:14:41 MR. MOODY: I'm going to object. I think it
11:14:43 calls for speculation, Judge.
11:14:45 THE COURT: Well, I think it's -- are you
11:14:47 trying to say the D & W is general public or are you
11:14:50 just using it as an example, the general public.
11:14:53 MS. PEEBLES: As a -- as a general statement.
11:14:54 THE COURT: You're not specifically asking --
11:14:55 MS. PEEBLES: No, but I'll --
11:14:56 THE COURT: Okay, he can answer the question.
11:14:58 He already did. He can answer the question.
11:15:01 **A.** Could you rephrase the question?
11:15:03 **Q.** Creating a document regarding a confidential

11:15:06 informant, thumbprints, code name, pedigree, address,
11:15:11 photograph, names and numbers of drug dealers, that stuff
11:15:14 is dropped in a public place and found by a civilian, that
11:15:19 would pretty much render the person useless, correct?

11:15:21 **A.** Not in every case.

11:15:24 **Q.** Not in every case.

11:15:25 **A.** Correct.

11:15:26 **Q.** And in a case where others know about that
11:15:29 information being dropped in the parking lot, that would be
11:15:31 a problem, correct?

11:15:33 **A.** It could potentially be a problem. I mean you're
11:15:36 asking me to fill in the blanks of a lot of information
11:15:39 here. Generally it could be a problem.

11:15:41 **Q.** All right, and is it fair to say that if one person
11:15:45 knows, you don't know who else might know, is that fair to
11:15:49 say?

11:15:49 MR. MOODY: Objection. Calls for speculation.

11:15:51 THE COURT: Sustained.

11:16:02 **Q.** Now, you remembered who Heidi Allen was the day she
11:16:11 was abducted, correct?

11:16:13 **A.** Correct.

11:16:14 **Q.** And you remembered meeting with her, correct?

11:16:16 **A.** Correct.

11:16:17 **Q.** And even though you thought her information was
11:16:21 useless and you didn't sign her up and create a code name,

11:16:25 you remembered her.

11:16:27 MR. MOODY: Objection. That was answered like three times.

11:16:29 THE COURT: Sustained.

11:16:30 **Q.** Now, were you made aware of the fact that Deputy VanPatten had dropped her informant information in the parking lot in January of 1992, were you aware of that?

11:16:46 MR. MOODY: Objection. Can we have a time frame?

11:16:49 MS. PEEBLES: I just said January of 1992.

11:16:51 MR. MOODY: That's when it was -- I thought you were referring to that was when it was dropped.

11:16:54 MS. PEEBLES: Was he aware of the fact that Deputy VanPatten dropped her information in the parking lot of the D & W in 1992.

11:17:01 MR. MOODY: And my time frame question is when was he aware. He is obviously aware of it now.

11:17:07 MS. PEEBLES: I'm asking him if he was aware and then I will ask him when.

11:17:11 THE COURT: That's fine.

11:17:12 **A.** I became aware of it after the fact. No, I couldn't put a time frame on when but I became aware of it.

11:17:19 **Q.** Was it before she was abducted?

11:17:21 **A.** I could not answer that question. I don't remember.

11:17:24 **Q.** Now, would you agree with me that it would have been

11:17:31 prudent to write a report regarding those documents being found in a public place after they were found, would you agree with me?

11:17:39 MR. MOODY: I'm going to object, Judge. "Prudent." It calls for speculation.

11:17:44 MS. PEEBLES: He works with informants all the time.

11:17:46 THE COURT: I guess --

11:17:48 MR. MOODY: Then what is the relevance?

11:17:50 THE COURT: I guess the question is what would he have done. That I'll allow.

11:17:54 **A.** What would I have done? Exactly as it was done. It was documented with a punch card. It was recovered, so it was documented.

11:18:00 **Q.** Would you have followed up to find out who knew about those documents being dropped in the parking lot?

11:18:05 **A.** Would I have?

11:18:07 **Q.** That was my question.

11:18:08 **A.** Yes.

11:18:08 **Q.** Yes, you would have, right?

11:18:10 **A.** Yes.

11:18:10 **Q.** Because that would have been a wise thing to do.

11:18:14 MR. MOODY: Objection, Judge.

11:18:15 THE COURT: Sustained.

11:18:16 MR. MOODY: Argumentative.

11:18:18 **Q.** And in fact, if you had a good working relationship or if you cared about the confidential informant --

11:18:23 MR. MOODY: Objection, Judge.

11:18:24 THE COURT: Sustained.

11:18:29 **Q.** You knew Russell Sturtz?

11:18:31 **A.** I did.

11:18:31 **Q.** And if he had recommended a family member to work with you as a confidential informant and you learned that their identity had been breached, you would have called him, right?

11:18:42 MR. MOODY: I'm going to object, Judge.

11:18:44 THE COURT: Right. He's not the one who dropped the documents. All speculative.

11:18:59 MS. PEEBLES: Excuse me one moment.

11:19:00 THE COURT: Sure.

11:19:01 (Whereupon, there was a pause in the proceeding.)

11:19:07 **Q.** Is there a protocol in place if someone's identity is breached as a confidential informant?

11:19:20 MR. MOODY: Are we talking about ninety-one, ninety-two, ninety-five?

11:19:22 THE COURT: I think she's talking ninety-one, ninety-two.

11:19:25 MS. PEEBLES: Ninety-one, ninety-two.

11:19:26 THE COURT: Thank you.

11:19:27 **A.** I don't know what the standard operating procedure
11:19:29 was for the Oswego County Sheriff's Department in 1991 or
11:19:33 ninety-two.
11:19:34 **Q.** Was there ever any standing operating procedure at
11:19:37 any time when you were employed with the Oswego County
11:19:40 Sheriff's Department regarding what you would do if there
11:19:43 was a breach of a confidential informant's information?
11:19:46 **A.** Not that I'm aware of.
11:19:53 MS. PEEBLES: Nothing further. Thank you.
11:19:55 THE COURT: Mr. Moody?
11:19:58 REDIRECT EXAMINATION
11:19:59 BY MR. MOODY:
11:20:00 **Q.** You were asked a lot of questions about your
11:20:02 experience working with informants and working with drug
11:20:05 cases. Based on your experience, if -- would a drug dealer
11:20:11 generally wait twenty-six months to do something about an
11:20:14 informant they found out about?
11:20:17 MS. PEEBLES: Objection. Speculative.
11:20:18 THE COURT: Sustained.
11:20:19 MR. MOODY: I have no further questions.
11:20:20 THE COURT: You can step down, sir.
11:20:22 THE WITNESS: Thank you sir.
11:20:23 THE COURT: Thank you. Mr. Moody, next
11:20:24 witness.
11:20:25 MR. MOODY: Judge, we have one more witness

11:20:26 here. It's after eleven. Do you want me to call
11:20:29 somebody else here? I don't know how long they're
11:20:30 going to be but it will be --

11:20:31 THE COURT: Let's take this witness and we'll
11:20:33 see. I need to be done by noon at the latest so one
11:20:36 more witness?

11:20:37 MS. PEEBLES: Pardon me, I'm sorry?

11:20:38 THE COURT: He has one witness lined up
11:20:39 already.

11:20:40 MS. PEEBLES: Oh, yeah.

11:20:41 MR. MOODY: Yeah, he's here.

11:20:43 MS. PEEBLES: I mean it's up to the Court.

11:20:44 THE COURT: No, I'm fine as long as I'm done
11:20:46 by noon.

11:20:47 MR. MOODY: The People call Deputy Michael
11:20:50 Montgomery.

11:21:29 THE CLERK: Raise your right hand, left on the
11:21:32 Bible.

11:21:32 MICHAEL MONTGOMERY, Called as a witness,
having been duly sworn, was examined and testified as
11:21:36 follows:

11:21:36 THE CLERK: Please state your name for the
11:21:41 record.

11:21:41 THE WITNESS: Michael Montgomery.

11:21:43 THE CLERK: Spell your last name.

11:21:45 THE WITNESS: M-O-N-T-G-O-M-E-R-Y.
11:21:48 THE CLERK: Have a seat please.
11:21:50 THE COURT: Mr. Montgomery, before Mr. Moody
11:21:53 starts, I'm going to ask you whether or not you consent
11:21:55 to having your testimony audio and videotaped.
11:21:58 THE WITNESS: That's fine.
11:21:59 THE COURT: Is that a consent?
11:22:01 THE WITNESS: Yes, it is consent.
11:22:02 THE COURT: Okay, thank you. Go ahead, Mr.
11:22:07 Moody.
11:22:07 MR. MOODY: I'm putting the microphone on,
11:22:09 Judge. It's a little tangled up.
11:22:12 DIRECT EXAMINATION
11:22:14 BY MR. MOODY:
11:22:16 **Q.** Are you employed, sir?
11:22:30 **A.** Yes, sir, I am.
11:22:31 **Q.** By whom?
11:22:33 **A.** I am the executive director of Southern Oswego
11:22:37 Volunteer Ambulance Service in Central Square, New York.
11:22:40 **Q.** And how long have you been doing that?
11:22:44 **A.** Since June of 2010.
11:22:46 **Q.** And prior to that were you employed?
11:22:49 **A.** Yes, sir.
11:22:50 **Q.** Whereabouts?
11:22:51 **A.** Well, I was employed with the Sheriff's Department

11:22:54 from 1989 to 1998, and then I went into nursing being
11:23:01 employed at St. Joseph's emergency department and still am
11:23:04 now as a per diem employee.

11:23:05 **Q.** I want to focus on your time with the Sheriff's
11:23:09 Department. I want to direct your attention to
11:23:12 specifically back to the time period late 1991, early 1992.
11:23:17 What were your duties or assignments during that time
11:23:22 period?

11:23:22 **A.** I was assigned as a patrol officer on Sergeant Cox's
11:23:26 shift, central zone.

11:23:27 **Q.** And the central zone would be what?

11:23:29 **A.** Anything from the City of Oswego usually to U.S.
11:23:32 Route 11.

11:23:33 **Q.** Okay.

11:23:34 **A.** Lake Ontario to Onondaga County.

11:23:36 **Q.** Would that include the intersection of 104 and 104B?

11:23:39 **A.** Yes, it would.

11:23:40 **Q.** Where the D & W was located at that point in time?

11:23:43 **A.** Yes, sir, that's where it was.

11:23:44 **Q.** Were you familiar with that store?

11:23:46 **A.** Yes, sir.

11:23:46 **Q.** Why was that?

11:23:47 **A.** It's the middle of my patrol zone, Route 104 is a
11:23:52 pretty straight route between everything, it had a pay
11:23:55 phone on the corner of the building that we could use for

11:23:58 contact with the agency, whatever our needs were.

11:24:03 **Q.** Pay phone, was that on the inside or outside of the
11:24:05 building?

11:24:06 **A.** It was on the outside of the building which made it
11:24:09 easier for us to use.

11:24:10 **Q.** In the early part of 1992 or late 1991, do you
11:24:20 remember going to the D & W to pick up something?

11:24:23 **A.** I did not until which time I was contacted by the
11:24:27 District Attorney's Office and brought in related to this
11:24:30 case.

11:24:38 **Q.** Since you've -- you've obviously since then reviewed
11:24:43 some documents and some materials, is that accurate?

11:24:45 **A.** Yes, sir, I have.

11:24:45 **Q.** And do you remember now having a present
11:24:47 recollection of going there?

11:24:49 **A.** I have seen the dispatch card sending me there, has
11:24:54 my shield number on it. Other than that, I can say yes I
11:25:00 did go there.

11:25:01 **Q.** Okay, I want to show you what's been marked as
11:25:04 People's Exhibit B, and there are a number of items in
11:25:10 there. If you could look through and see if you recognize
11:25:12 any of the items in there.

11:25:15 **A.** The only item that I vaguely recall is a Polaroid
11:25:36 picture.

11:25:36 **Q.** Okay, and where do you recall this from?

11:25:38 **A.** I -- passed through my hand at some point where I've seen it somewhere.

11:25:44 **Q.** Okay, you mention that you reviewed some documents. Do you remember reviewing a statement you gave in December of 1994?

11:25:52 **A.** I do.

11:25:53 **Q.** If I were to show you that document, would that refresh your recollection to some extent?

11:25:58 **A.** I'm sure it would.

11:25:59 **Q.** I'm going to show you what's been received as people's, or excuse me, Defendant's Exhibit 8 and ask if you recognize that.

11:26:05 **A.** That is the report I was requested to write by Lieutenant Goodsell related to responding to D & W store in late ninety-one, ninety-two to retrieve items that had been found in the parking lot.

11:26:18 **Q.** Okay, and review that to yourself, if that reviews your recollection as to which items you recovered.

11:26:26 **A.** It does, and the only item that I can per se that I did recover is the photograph.

11:26:34 **Q.** So that's the one of the items that you recovered?

11:26:36 **A.** That is one of the items.

11:26:38 **Q.** Okay.

11:26:40 **A.** I'm not sure.

11:26:41 THE COURT: I'm not sure if I understood his

11:26:42 answer. Is that the only one his memory's been
11:26:45 refreshed?

11:26:45 THE WITNESS: Yes. I do not recall all the
11:26:46 other paperwork.

11:26:50 **Q.** Now, do you remember who you got the documents from?

11:26:57 **A.** I do not, sir.

11:26:59 **Q.** Okay, and do you remember what time of day or night
11:27:03 it was?

11:27:05 **A.** I do not.

11:27:10 **Q.** You mentioned seeing a punch card. What's a punch
11:27:13 card?

11:27:13 **A.** That was our dispatch cards at which point anybody
11:27:17 would call the Sheriff's Department to file a complaint, a
11:27:21 card would be started, information taken, deputy assigned,
11:27:26 and then it would have the outcome of the incident on the
11:27:29 bottom of it, report taken, no report, turned over to.

11:27:34 **Q.** Okay, I want to show you what's been marked and
11:27:36 received as Defendant's Exhibit 144 and ask you if you
11:27:39 recognize that.

11:27:43 **A.** That would be the Sheriff's Department punch card
11:27:49 for found property at the D & W store January twenty-third,
11:27:55 1992 at zero-nine twelve.

11:27:58 **Q.** Okay, and you mentioned that there -- you had some
11:28:01 kind of badge number or something?

11:28:02 **A.** I do. My officer assigned is one one three four, 11:28:06 that is myself.

11:28:08 **Q.** Okay, and when you say office assigned, that means
11:28:12 that what?

11:28:13 **A.** That was the officer that responded to the incident
11:28:16 and retrieved items, and according to this, I turned them
11:28:20 over to Deputy VanPatten.

11:28:22 **Q.** And does that refresh your recollection as to what
11:28:25 you did with them?

11:28:26 **A.** The best of my recollection is that they were placed
11:28:29 in an envelope and put into his mailbox at the Sheriff's
11:28:34 Department.

11:28:34 **Q.** Do you remember who directed you or requested that
11:28:37 you do that?

11:28:38 **A.** That would be Sergeant Cox would have directed me as
11:28:42 to what to do with the items and return them to the deputy.

11:28:53 **Q.** After you put them in Deputy VanPatten's mailbox,
11:29:00 did you ever see them again?

11:29:02 **A.** Only at this point. Only related to talking to you
11:29:05 about two weeks ago.

11:29:08 **Q.** And now I want to fast forward a little bit to
11:29:12 December of 1994. You were still with the Sheriff's
11:29:15 Department at that point in time?

11:29:16 **A.** Yes, I was.

11:29:16 **Q.** And you were aware that Heidi Allen had been
11:29:19 abducted from the D & W?

11:29:21 **A.** Yes, sir.

11:29:22 **Q.** In December of 1994, do you remember being asked to do something with regard to the documentation that you recovered from D & W?

11:29:35 **A.** My only recollection is that of Lieutenant Goodsell asking me to write up that I had recovered the items.

11:29:42 **Q.** Okay, and again, Exhibit 8, you identified that as the report or statement that you gave?

11:29:48 **A.** Yes, sir, that is.

11:29:49 **Q.** Okay, is there a date that you filled that report out?

11:29:54 **A.** Eighth of December, 1994 at fifteen-hundred hours.

11:30:00 **Q.** And would that have been to your recollection the same day that you were asked to do it?

11:30:05 **A.** To the best of my knowledge it would be that day.

11:30:07 **Q.** And are there any other dates or date stamps on there?

11:30:12 **A.** There is a date stamp received by the Sheriff's Department on December ninth.

11:30:19 **Q.** Of what year?

11:30:19 **A.** 1994.

11:30:20 **Q.** And did you put that date stamp on there?

11:30:23 **A.** No, I did not. That would have come from the records department.

11:30:25 **Q.** Okay, do you know who did you give the statement or

11:30:29 report that you filled out, who did you give it to after it was done?

11:30:32 **A.** I believe I just placed it in the reports bin to be filed through the appropriate channels.

11:30:38 **Q.** Did you know Heidi Allen?

11:30:56 **A.** I knew her from the store as being one of the clerks there in my patrol zone.

11:31:02 **Q.** Do you remember whether or not she worked there around the time that you picked this material up?

11:31:08 **A.** I cannot recall.

11:31:10 **Q.** When you went to pick it up, do you remember whether or not you had any conversation with the person who turned it over to you?

11:31:19 **A.** I cannot recall.

11:31:21 **Q.** Do you remember whether the person that gave it to you was male or female?

11:31:26 **A.** No, I don't.

11:31:28 **Q.** Now the statement that you gave to -- to -- at the request of Lieutenant Goodsell indicates that you also found a three by five card, is that accurate?

11:31:59 **A.** Accurate to the report at that time, yes.

11:32:02 **Q.** And showing you a couple of three by five index cards that were in Exhibit B, do you recollect -- do you have any present recollection whether or not either of -- any of those items were the card that you saw?

11:32:36 **A.** My best recollection is that there was a code name
11:33:12 on it, and I can't remember to this day what that was.
11:33:17 Looks like the items that I recovered to go with the
11:33:21 picture, the picture was of Heidi, but I can't absolutely
11:33:24 say that's what I recovered.

11:33:32 **Q.** And you said you don't remember having a
11:33:35 conversation with the person that you recovered the items
11:33:37 from. Do you --

11:33:38 MS. PEEBLES: Asked and answered.

11:33:39 THE COURT: Are you going someplace else with
11:33:42 it?

11:33:43 **Q.** Do you remember whether you did any other further
11:33:45 investigation with regard to who found the card or who
11:33:50 might have known about the card?

11:33:52 **A.** No, I did not.

11:33:54 MR. MOODY: I have no further questions.

11:33:55 THE COURT: Ms. Peebles, just give me a second
11:33:58 please.

11:33:58 (Whereupon, there was a pause in the
11:34:09 proceeding.)

11:34:09 THE COURT: Okay, Ms. Peebles.

11:34:13 CROSS-EXAMINATION
11:34:13 BY MS. PEEBLES:

11:34:14 **Q.** Now Mr. Montgomery, you would agree with me that the
11:34:39 documents that you picked up and photograph from the D & W,

11:34:43 those were sensitive documents, is that a fair statement?
11:34:48 **A.** Yes.
11:34:50 **Q.** Did you have any working relationship with any
11:34:53 confidential informants?
11:34:55 **A.** No, I did not.
11:34:59 **Q.** But you recognize that that would be sensitive
11:35:02 information that was handed over to you at the D & W when
11:35:05 you picked it up in 1992, correct?
11:35:08 **A.** Correct.
11:35:08 **Q.** Now, it's your testimony that you did not do
11:35:11 anything further to investigate who may have known about
11:35:17 the card in the parking lot, is that fair to say?
11:35:19 **A.** That is fair to say.
11:35:21 **Q.** You indicated that you created an internal memo in
11:35:30 December of 1994.
11:35:32 **A.** Correct.
11:35:33 **Q.** On your direct, correct?
11:35:35 **A.** Correct.
11:35:35 **Q.** So that was an internal memo within the Oswego
11:35:38 County Sheriff's Department, correct?
11:35:39 **A.** It was requested by the lieutenant, I wrote it up,
11:35:43 put it into our standard method of filing paperwork.
11:35:47 **Q.** And prior to that, you never wrote anything about
11:35:53 picking the stuff up from the D & W, correct?
11:35:55 **A.** No, ma'am.

11:35:56 **Q.** In fact, when you wrote your statement in December, you never mentioned anything about being directed to go to the D & W, correct?

11:36:06 **A.** Correct.

11:36:06 **Q.** You thought you were just doing routine patrol and you just drove in there and picked the stuff up, correct?

11:36:13 MR. MOODY: Objection, Judge.

11:36:14 **A.** I can't recall.

11:36:14 THE COURT: Hold on a second. What's your objection?

11:36:17 MR. MOODY: I'll withdraw it.

11:36:18 **Q.** Would you -- well, the D & W was part of your routine patrol, fair to say?

11:36:23 **A.** Correct.

11:36:24 **Q.** And you went to the D & W pretty regularly when you were on patrol?

11:36:28 **A.** Yes, ma'am.

11:36:29 **Q.** And that's how you knew Heidi Allen?

11:36:31 **A.** Yes, ma'am.

11:36:34 **Q.** And the items that you identified, well, you don't remember, but to the best of your recollection, was there anything on any of those documents that identified Deputy VanPatten?

11:37:02 **A.** I do not recall. I don't believe I just saw anything that way.

11:37:07 **Q.** Now when you say you went back to Sergeant Cox, you recall showing him the items that you picked up from the D & W?

11:37:16 **A.** No, I don't.

11:37:27 MS. PEEBLES: I have no further questions, thank you.

11:37:29 THE COURT: Mr. Moody?

11:37:32 MR. MOODY: I have no redirect, Judge. Question becomes, you know, whoever I get is going to take ten minutes to get here.

11:37:40 THE COURT: You can step down, sir.

11:37:41 THE WITNESS: Thank you.

11:37:44 THE COURT: Are they going to be this brief?

11:37:47 MR. MOODY: Well, I mean I would -- be the person that would be easiest for me to call because everybody else is further away would be Deputy MacDonald, and he would be basically putting in the -- identifying the evidence that has been admitted as being duplicate copies of those, the originals, color copies of the original in order to establish --

11:38:07 THE COURT: Original what?

11:38:08 MR. MOODY: For example, all the green marks that I put in bags, he put them all in bags for me.

11:38:12 THE COURT: Okay.

11:38:13 MR. MOODY: To establish that -- that --

11:38:15 because the originals were already still obviously
11:38:17 still in the file, I had to make colored copies of all
11:38:20 that and bag them up so that we can show that they have
11:38:23 the green mark on them. How long he's going to take I
11:38:27 can't really say.

11:38:28 MS. PEEBLES: Well, I would object to the
11:38:29 testimony period as being irrelevant.

11:38:31 THE COURT: Well, I've got to hear the
11:38:33 testimony before I decide that. I cannot change this
11:38:35 prior commitment. First off, let me discuss and give
11:38:38 the ruling regarding Ms. Bianco's and Ms. Peebles'
11:38:44 request to be able to cross-examine Mr. Dodd regarding
11:38:48 the trial testimony, the transcript and the oppositions
11:38:52 raised by Mr. Oakes. The Court is not going to allow
11:38:55 that cross-examination. However, the basis, we already
11:38:58 have -- we have a trial transcript. The trial
11:39:02 transcript speaks for itself. In light of being
11:39:06 careful and being as thorough as possible, I will
11:39:09 review that though. If you -- if the two of you give
11:39:13 me --

11:39:14 MS. PEEBLES: I have it, Judge.

11:39:14 THE COURT: Because I don't have to review the
11:39:16 trial transcript to try to find that part.

11:39:18 MS. PEEBLES: I assume we're going to be
11:39:20 briefing the evidence at the end of the hearing.

11:39:23 THE COURT: I would think so, sure.

11:39:25 MS. PEEBLES: So at that time we'll cite the
11:39:26 portions of the transcript.

11:39:27 THE COURT: That's fine, that's fine, and I
11:39:29 will review the transcript, okay? We are in recess
11:39:33 until 8:45 tomorrow morning. How many more witnesses
11:39:38 do you anticipate calling?

11:39:40 MR. MOODY: We'll have a full day tomorrow. I
11:39:41 mean we -- I think we've got probably at least nine or
11:39:45 ten left.

11:39:46 MR. OAKES: Yeah.

11:39:47 THE COURT: Okay. 8:45 tomorrow.

11:39:59 MR. OAKES: Actually, Your Honor, can I
11:40:01 approach with Ms. Peebles for a moment?

11:40:03 THE COURT: Yeah, stay on the record. Go
11:40:04 ahead. Ms. Peebles.

11:40:05 MS. PEEBLES: What do you want?

11:40:06 THE COURT: I don't know.

11:40:10 (Whereupon, there was an off the record
11:40:12 discussion at the bench).

(Conclusion of Proceeding).

* * *

C E R T I F I C A T E

I, JENNIFER ADYDAN, an Official Court Reporter in and for the State of New York, Fifth Judicial District, do hereby certify that the foregoing is a true, complete and accurate transcript of my stenographic notes taken in the above-entitled matter and the whole thereof to the best of my ability.

Jennifer Adydan

Jennifer Adydan
Official Court Reporter

DATED: March 31, 2015

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF OSWEGO: CRIMINAL TERM:

---------------------------------------x

THE PEOPLE OF THE STATE OF NEW YORK

Indict. No.
94C-0161

- against-

HEARING
VOLUME 12

GARY THIBODEAU,

Defendant.

---------------------------------------x

Oswego County Courthouse
25 E. Oneida Street
Oswego, NY 13126

DATE: March 27, 2015

Before:

HONORABLE DANIEL R. KING
Acting County Court Judge

Appearances:

GREGORY S. OAKES, ESQ.
District Attorney, Oswego County
MARK M. MOODY, ESQ.
Chief Assistant District Attorney

OFFICE OF THE FEDERAL PUBLIC DEFENDER
BY: LISA PEEBLES, ESQ., Public Defender
RANDI JUDA BIANCO, ESQ., Assistant Public Defender
Attorneys for Defendant

Defendant is not present

08:24:20

INDEX TO WITNESSES

	Direct	Cross	Redirect	Recross
FOR THE PEOPLE:				
Donald Dodd	--	--	2018/2122	2044
Darcy Purdy	2131	2156	2159	2161
Dale Yager	2163	2176	--	--
Joseph Lisi	2182	2199	2205	2209
James Pietroski	2211	2223	2224	2226
FOR THE DEFENDANT:				
None				

INDEX TO EXHIBITS

	Identification	Evidence
FOR THE PEOPLE:		
WWW. Answer	2020	2020
XXX. 2/3/95 letter	2021	2022
YYY. Typed/handwritten pages	2028	2031
ZZZ. Notepad with notes	2035	2038
AAAA. 5/26/94 letter	2125	--
BBBB. DA office papers	2128	--
CCCC. Marriage registry	2131	2140
DDDD. Address book	2131	--
EEEE. Catalog	2131	2146
FFFF. Vacation brochure	2131	2147
GGGG. Card	2131	2154
HHHH. Lead sheet	2170	--

FOR THE DEFENDANT:

52-A.	Re-marked statement	2085	2087
164.	6/5/95 handwritten notes	2047	2048
165.	1/6/95 handwritten notes	2049	--

08:43:39 THE COURT: As I indicated, the Court received
08:43:40 a fax copy of a letter motion made by Ms. Peebles. Did
08:43:44 you receive a copy of that, Mr. Oakes?

08:43:45 MR. OAKES: We did, Your Honor.

08:43:46 THE COURT: Okay, you've had the opportunity
08:43:48 to review the document?

08:43:50 MR. MOODY: We have, Judge.

08:43:50 THE COURT: Okay, and your position?

08:43:52 MR. MOODY: Judge, we would oppose.
08:43:55 Initially, Judge, there's been no foundation laid to --
08:43:59 to somehow justify the claim that Michael Bohrer
08:44:06 received a -- was faxed these copies. I don't believe
08:44:09 Michael Bohrer was even asked when he testified if he
08:44:12 had a fax machine in May of 1994.

08:44:15 THE COURT: Yeah, but I think you're -- I
08:44:15 think you're misunderstanding what's being requested.
08:44:17 It's not an admissibility in terms of whether Bohrer,
08:44:20 we're going to get these documents because they're
08:44:22 Bohrer documents, I think that it has to -- the
08:44:24 foundation, if you are going to cross-examine, has to
08:44:26 be the fax number is in fact the DA fax number solely
08:44:29 for the purposes of impeachment, correct, Ms. Peebles,
08:44:32 Ms. Bianco?

08:44:33 MS. PEEBLES: Yes, Judge.

08:44:34 THE COURT: This issue was raised I think on

08:44:36 Wednesday morning, and the Court was of the opinion
08:44:38 that Ms. Bianco was trying to get documentary evidence
08:44:41 in to the Court that was at this point subject to a
08:44:45 motion, you would agree, right, all the Bohrer
08:44:48 documents are subjected to the motion submitted by the
08:44:50 People?

08:44:51 MS. PEEBLES: Although, Judge, I reread the
08:44:53 transcript, and it appears we did get in 52 and 52-A
08:44:56 for the purpose of just establishing that they were
08:44:58 actually in Mr. Bohrer's box but not for the truth of
08:45:01 the matter.

08:45:01 THE COURT: Not for the truth of the matter.

08:45:02 MS. PEEBLES: Which is why we needed the
08:45:04 foundation set through the document.

08:45:06 THE COURT: I understand that, but what I'm
08:45:08 saying is Wednesday the Court was of the opinion that
08:45:11 Ms. Bianco was trying to get in all the documents in
08:45:13 that were subject to the motion that you're waiting on
08:45:15 a decision. I --

08:45:16 MS. PEEBLES: Yes.

08:45:17 THE COURT: The Court made a mistake. The
08:45:18 Court didn't realize it was just for impeachment
08:45:22 purposes. For the very limited purpose, I don't see
08:45:23 why they don't come in for impeachment purposes.

08:45:26 MR. MOODY: Well, Judge, I guess the question

08:45:29 then becomes their impeachment is, if I understand the 08:45:32 motion, somehow related to a security breach is what 08:45:35 they're arguing. The problem with that is that this -- 08:45:37 this fax, and -- and if I can be permitted a bit of 08:45:41 latitude, this fax was -- took place after the arrest 08:45:46 of Richard Thibodeau, one day prior to his preliminary 08:45:51 hearing.

08:45:51 THE COURT: Um hum.

08:45:52 MR. MOODY: The fax cover sheet which contains 08:45:55 some of the information, it does not, I will admit, the 08:45:57 stapled copy, and it appears from the copy that I have, 08:46:00 the staple has -- was loosened or document had fallen 08:46:04 off it appears, that's my speculation, but to Judge 08:46:09 Walsh, then Attorney Walsh, on May thirty-first. In 08:46:13 addition, the documents that they're talking about are 08:46:16 documents that relate to Christopher Bivens and his -- 08:46:21 and he testified at that preliminary hearing and was 08:46:23 cross-examined with those. My problem with this is, 08:46:27 Judge, that the implication that they're trying to 08:46:30 impeach him with is that he faxed them to Bohrer. That 08:46:34 was the allegation and the question that was raised on 08:46:37 Wednesday. Why did, and I believe I'm quoting pretty 08:46:41 closely here, why Don Dodd was faxing documents to a 08:46:47 prime suspect, Michael Bohrer.

08:46:48 THE COURT: But isn't that a question then for

08:46:50 the defense to say to Mr. -- Mr. Dodd why did you fax
08:46:53 this to Mr. Bohrer, and if Mr. Dodd says I didn't, then
08:46:57 they may not have the proper foundation and then it
08:47:01 affects their -- the ability or the value of the
08:47:03 impeachment does it not?

08:47:06 MR. MOODY: If the question is does Don Dodd
08:47:10 know the fax number that's on there and does he know
08:47:13 who it was faxed to, I guess I don't have a problem
08:47:15 with that, but if the implication that there -- that --
08:47:18 or the question is that they faxed it to Michael
08:47:21 Bohrer, I don't believe -- based on Mr. Bohrer's
08:47:22 testimony, that he got these statements from various
08:47:24 people, he never said that it was faxed to him, I don't
08:47:27 believe --

08:47:27 THE COURT: That's for the Court to consider
08:47:29 based on Mr. Dodd's testimony, right?

08:47:31 MR. MOODY: Pardon me?

08:47:31 THE COURT: This could blow up in the
08:47:33 defense's face if, you know --

08:47:34 MR. MOODY: It could I suppose, yes.

08:47:36 THE COURT: So I think if it's an issue of I
08:47:39 know where they're trying to show that Mr. Dodd may not
08:47:43 have had total control over the file, challenging his
08:47:46 credibility, I think it's relevant to credibility only.
08:47:49 Only.

08:47:50 MS. PEEBLES: That's right.

08:47:51 THE COURT: And if -- if you try to move it in which I'm not sure it would even be allowed to come in, but if there's no objection it does come in, it will only be considered for the fax number on the top. I think it's incumbent upon the defense to be able to establish that it went to Bohrer, or it, you know, there's no proof this went to Bohrer. Bohrer has it somehow, I agree, Bohrer, I apologize for mispronouncing his name.

08:48:16 MS. PEEBLES: But I do think 52 and 52-A have already been admitted for the limited purpose that it's already in the box, so we're not even entering 52 and 52-A in at this point because they're already in. All we're seeking to do is ask Mr. Dodd questions about it.

08:48:29 THE COURT: It should be very limited.

MS. PEEBLES: Correct.

08:48:30 THE COURT: It's not going to be a very long cross-examination. Did you fax it. No. I don't know. I don't know exactly what Ms. Bianco is going to create and ask but it's going to be very limited.

08:48:39 MR. OAKES: Your Honor, if I may.

08:48:41 THE COURT: Sure.

08:48:41 MR. OAKES: Your Honor's probably correct in the assessment. I guess the one issue I would have is

08:48:46 the foundation. I'm looking at the motion papers that
08:48:48 were submitted on this issue is there's a reference to
08:48:51 a breach in security. In referencing to the breach
08:48:55 that was referenced by Investigator Whipple. As of May
08:48:59 thirty-first of ninety-four when this was faxed to the
08:49:02 DA's Office, my understanding is the files were at the
08:49:06 Sheriff's Department at that point basically being
08:49:10 secured at the Sheriff's Department. They didn't move
08:49:12 up to the DA's Office Grand Jury room --

08:49:14 THE COURT: Till August.

08:49:16 MR. OAKES: -- at a later point. So if the
08:49:19 purpose is to show breach of security, that the file
08:49:20 was breached again, I don't think it --

08:49:22 THE COURT: You don't think it relates back to
08:49:23 the DA's office.

08:49:24 MR. OAKES: Right.

08:49:24 THE COURT: And I notice the date as well, so
08:49:27 again, relevant, yes. How's the Court going to
08:49:30 consider it, it depends.

08:49:31 MR. OAKES: Okay, I would just think as a
08:49:33 foundational matter, they're using it to show a breach,
08:49:36 they have to first establish the files were the sole
08:49:39 and exclusive custody of the DA at the thirty-first.

08:49:43 THE COURT: That's why I said it may or may
08:49:43 not be effective. Absolutely. Ms. Bianco, do you wish

08:49:47 to be heard?

08:49:48 MS. BIANCO: No, Your Honor, I was getting
08:49:50 some water.

08:49:50 THE COURT: Okay, so the Court will allow it
08:49:54 for the impeachment purposes only. However, I think
08:49:56 you have some hurdles to overcome, but it's up to Ms.
08:49:59 Bianco or Ms. Peebles to overcome those hurdles, but if
08:50:02 you try to move these documents in, and if they're
08:50:05 allowed in, it will only be allowed for the fax number
08:50:08 issue, okay, Ms. Bianco?

08:50:10 MS. BIANCO: That's fine, Judge.

08:50:11 THE COURT: Are you ready?

08:50:12 MR. MOODY: Yes.

08:50:13 THE COURT: If memory serves me right, Mr.
08:50:15 Dodd is back and we're here on the recross by Ms.
08:50:17 Bianco. You've already redirected.

08:50:19 MR. MOODY: No, I believe we're still in the
08:50:20 middle of my redirect because I believe we had reached
08:50:24 the point of, and I apologize, I did after Wednesday
08:50:30 find actually --

08:50:31 THE COURT: That's right, you had not found
08:50:32 the response to it.

08:50:34 MR. MOODY: Yeah. To give credit where credit
08:50:36 is due, my learned boss found it 'cause I couldn't
08:50:40 remember where I had seen it so --

08:50:45 THE COURT: Okay, Mr. Dodd, please.

08:51:05 DONALD DODD, Called as a witness, having been duly
08:51:06 sworn, was examined and testified further as follows:

08:51:06 THE CLERK: Please state your name for the
08:51:10 record.

08:51:10 THE WITNESS: Donald H. Dodd.

08:51:12 THE CLERK: Thank you.

08:51:13 THE WITNESS: Thank you.

08:51:13 THE COURT: Mr. Dodd, I'll again ask you do
08:51:15 you consent to having your testimony audio or video
08:51:18 taped?

08:51:18 THE WITNESS: I consent, yes, sir.

08:51:19 THE COURT: Thank you, Mr. Dodd.

08:51:21 THE WITNESS: Thank you.

08:51:21 THE COURT: Mr. Moody, whenever you're ready,
08:51:23 sir.

REDIRECT EXAMINATION

08:51:40 BY MR. MOODY:

08:51:41 **Q.** Mr. Dodd, I believe when we adjourned on Wednesday
08:51:43 we were at the point where we were discussing Judge Walsh's
08:51:48 or Mr. Walsh's response, excuse me, motion which is
08:51:54 identified as Exhibit 142. Do you recognize that motion
08:51:57 and do you recognize the questions that we're talking about
08:52:00 at that point in time or the issue that was discussed at
08:52:02 that point in time?

08:52:03 **A.** One-forty-two I recognize, it appears to be the notice of motion and motion of Attorney William Walsh on behalf of Richard Thibodeau, yes, sir.

08:52:11 **Q.** And specifically we were -- what was being discussed I believe on cross was page eleven, paragraph J. Do you remember that?

08:52:23 **A.** I know that Ms. Bianco had asked me a series of questions, yes.

08:52:26 **Q.** Now I want to -- I want to go back if we could two pages to page nine because on page eleven that subparagraph J is part of a larger paragraph thirty-three, is that correct?

08:52:40 **A.** Starting at upon my inspection of the document page nine which is entitled demand for bill of particulars, it starts with a paragraph thirty-three, and then after thirty-three it's alphabetically labeled A through Z, and J is a portion of thirty-three, yes.

08:53:04 **Q.** Now, in the -- in paragraph J there are a number of lead sheets that are identified that apparently that Judge Walsh identified that he didn't believe he got, is that accurate?

08:53:18 **A.** He identified it in paragraph J as lead sheets, yes.

08:53:22 **Q.** And upon receiving this motion, did you go through and answer, answer the motion?

08:53:29 **A.** Yeah. I submitted an answer to the entirety of the

08:53:31 motion. This was just one aspect of the motion, yes.
08:53:44 (People's Exhibit WWW was marked for
08:53:46 identification).
08:53:59 **Q.** Showing you what has been marked as WWW, I'm going
08:54:03 to ask you if you recognize that.
08:54:05 **A.** I do recognize it, yes, sir.
08:54:32 **Q.** And what is that?
08:54:33 **A.** This appears to be a reproduction of my answer in
08:54:38 response to Attorney Walsh's motion that is one-forty-two.
08:54:43 **Q.** Okay, and does it appear -- you say it appears to be
08:54:46 a copy of it, is that accurate? Doesn't appear to be the
08:54:51 original.
08:54:51 **A.** It doesn't appear to be the original, no, it does
08:54:53 not.
08:54:53 **Q.** Does it appear to be a full and fair and accurate
08:54:55 copy as you recollect?
08:54:56 **A.** Yes.
08:54:57 MR. MOODY: Judge, previously given a copy of
08:55:00 this to defense counsel, but I would show it again to
08:55:03 defense counsel and move to admit.
08:55:12 MS. BIANCO: No objection.
08:55:12 THE COURT: WWW is in.
(People's Exhibit WWW was received in
08:55:16 evidence).
08:55:16 **Q.** Now initially, in the process that you were doing at

08:55:23 the time, if you -- a motion or document, legal document
08:55:35 was sent to one judge, or excuse me, to one attorney, would
08:55:38 you also send that carbon copy to the other attorney?

08:55:41 **A.** Yes.

08:55:42 MS. BIANCO: Objection to the broad scope of
08:55:44 the question "would you also send." If he wants to
08:55:46 talk about specific documents, that's fine, but not in
08:55:49 general.

08:55:52 MR. MOODY: I was trying to set a little bit
08:55:54 of a foundation.

08:55:55 THE COURT: Foundation. I'll allow the
08:55:56 question, then you can move to specifics.

08:55:59 **Q.** So with regard to WWW, would you have sent a copy of
08:56:03 that to Attorney Fahey as well?

08:56:09 **A.** Best recollection is yes.

08:56:11 **Q.** Now, showing you WWW again, what is the date on that
08:56:18 response?

08:56:21 **A.** The affirmation by myself is, page forty-nine of the
08:56:34 response, is February second, 1995. February second, 1995,
08:56:38 sir.

08:56:38 **Q.** Thank you.

08:57:12 (People's Exhibit XXX was marked for
08:57:14 identification).

08:57:15 **Q.** Showing you Exhibit XXX, do you recognize that?

08:57:18 **A.** Just a minute, sir.

08:57:39 (Whereupon, there was a pause in the
08:57:49 proceeding.)

08:57:49 **A.** I do.

08:57:50 **Q.** And what is that?

08:57:50 **A.** This appears to be a reproduction of a letter, I'll
08:57:54 call it a file copy letter, dated February third, 1995 by
08:57:59 myself to Attorney Joseph Fahey with a date of February
08:58:03 third, 1995, specifically referencing enclosing --

08:58:07 **Q.** We'll discuss what it talks about in a moment. Does
08:58:10 it appear to be a full and fair and accurate copy of that
08:58:12 letter as you remember it?

08:58:15 **A.** Yes.

08:58:22 MR. MOODY: Showing Exhibit XXX to defense
08:58:26 counsel, Judge, I would move to admit.

08:58:30 MS. BIANCO: May I have a moment, Your Honor?
08:58:31 It's a two-page letter.

08:58:32 THE COURT: Sure.

08:58:33 (Whereupon, there was a pause in the
08:59:33 proceeding.)

08:59:33 MS. BIANCO: No objection.

08:59:35 THE COURT: XXX is in without objection.

(People's Exhibit XXX was received in
08:59:41 evidence).

08:59:41 **Q.** And in XXX does it reflect one way or the other
08:59:46 whether or not a copy of that motion which is identified as

08:59:49 WWW was sent to Joe Fahey?

08:59:53 **A.** It does.

08:59:56 **Q.** What specifically does it say?

08:59:58 **A.** Under the salutation, "Dear Mr. Fahey: Enclosed 09:00:01 please find a copy of the People's answering papers to the 09:00:04 motion of Attorney William Walsh representing codefendant 09:00:06 Richard P. Thibodeau."

09:00:08 **Q.** Now, in your answer, which is WWW, did you 09:00:21 specific -- well, actually I'm going to withdraw that 09:00:24 question. I want to talk a little bit about lead sheets 09:00:27 and the process of the investigation. Lead sheets as you 09:00:32 understand it were what with regard to the investigation if 09:00:36 you understand my question because it was poorly worded.

09:00:40 **A.** I do. A lead sheet would be a piece of paper that 09:00:43 would have a number on it, and as it relates to the 09:00:46 investigation, the lead number would reflect whatever the 09:00:52 lead number was. A lead number did not necessarily create 09:00:58 a lead sheet. It was merely a way to organize the leads 09:01:03 that came in so that a lead sheet would have the lead 09:01:08 number. Usually if memory serves correctly, it's in the 09:01:12 upper right-hand corner, and lead sheets would reflect 09:01:15 principally Investigator Whipple either creating lead sheet 09:01:22 and merely putting the source of the lead or assigning it 09:01:26 to someone for the purposes of further investigation.

09:01:28 **Q.** And if a lead sheet needed further investigation,

09:01:35 what -- with regard to discovery, what would happen if at
09:01:38 the time you turned the series of documents over there were
09:01:41 lead sheets that didn't -- that hadn't been completed,
09:01:44 hadn't been followed up?

09:01:46 **A.** If I understand your question correctly because --
09:01:48 and to properly answer it, this was a work in progress, it
09:01:51 was an investigation in progress, continued through the
09:01:53 entirety of it so that a specific lead number that
09:01:59 generated a lead sheet that was then tasked to a person to
09:02:02 do something, if the officer or person who did something
09:02:09 either obtained a statement or additional from a potential
09:02:13 witness or obtained additional information or created a
09:02:16 police report or gathered evidence, then the officer to
09:02:20 whom the lead sheet had been tasked would then provide that
09:02:25 information to Investigator Whipple and it would then be
09:02:29 made part of that particular lead sheet to keep it
09:02:32 organized, and the way it would be made part of it would be
09:02:35 stapled or affixed in some form or fashion.

09:02:37 **Q.** My question was you talked about for example on
09:02:42 December fourteenth a number of boxes being turned over to
09:02:45 Joe Fahey, do you remember that?

09:02:46 **A.** Yes.

09:02:47 **Q.** If there were lead sheets that on December
09:02:49 fourteenth had not yet been followed up on, what would have
09:02:53 been the status with regard to discovery with regard to

09:02:56 those lead sheets?
09:02:57 **A.** Well, the lead sheets would have been turned over to
09:03:00 Mr. Fahey, but if there was subsequent after obtained after
09:03:04 the date that they were made available, turned over, after
09:03:07 obtained documentation that was part of CPL 240.60 ongoing
09:03:12 discovery, and once that information was received by the
09:03:15 Sheriff's Department, then as part of the People's
09:03:18 obligation to turn it over, it would be then thereafter
09:03:23 photocopied in conformity with the procedure identified
09:03:25 before and then subsequently disclosed to attorneys Walsh
09:03:28 and Fahey.
09:03:29 **Q.** Now, what if a lead came in after say December
09:03:32 fourteenth and what would be the process for discovery on
09:03:38 that?
09:03:39 **A.** Well, the procedures stay constant as to insuring
09:03:43 that it would be organized what came in and what was
09:03:47 disclosed, but if a lead came in after the date of December
09:03:51 fourteen, 1994, and there was a lead sheet generated, and
09:03:58 that lead sheet would go over to counsel, and/or if there
09:04:03 was any additional documentation that was obtained in
09:04:06 furtherance of that lead sheet being tasked, it would also
09:04:10 be turned over to counsel, and that was part of the ongoing
09:04:13 discovery responsibility.
09:04:14 **Q.** But obviously after, if it came in, it would be
09:04:17 after the say the December fourteenth discovery.

09:04:20 **A.** Yes because to answer your question, this is very
09:04:23 much was a work in progress so that a particular lead that
09:04:28 had been turned over to Attorney Fahey and Walsh prior to
09:04:32 or on December fourteenth, if after that date there was
09:04:36 information that was obtained associated with that lead
09:04:41 number and sheet that had previously been obtained, even
09:04:44 though the lead sheet may have gone over subsequent to that
09:04:48 date, there was information generated, so that also had to
09:04:51 go over, but it related back in time to that particular
09:04:54 lead sheet number, and also there were -- there were
09:04:59 duplicate lead numbers. In other words --

09:05:02 **Q.** Well, what -- when you say that, what does that
09:05:04 mean?

09:05:05 **A.** An investigation is a work in progress, and I have
09:05:08 to state that Investigator Whipple is the person that
09:05:11 directly oversaw this. This was not something that I was
09:05:14 tasked to but I am familiar --

09:05:15 MS. BIANCO: Objection. This is
09:05:17 non-responsive, Judge.

09:05:18 MR. MOODY: I think he's trying to explain the
09:05:20 basis for his response.

09:05:21 THE COURT: I'll allow it.

09:05:22 **A.** I'm familiar with the process that was used.
09:05:25 Duplicate lead numbers could take various forms that a
09:05:31 person could report something and that could be lead one.

09:05:35 The same person could again contact the Sheriff's
09:05:40 Department and it could all of a sudden now be lead
09:05:43 one-hundred and fifty. Same person, same content, but in
09:05:47 essence it's another lead number that duplicated in essence
09:05:52 the substance of what the first lead number was, so there
09:05:57 are times when you might have the same source of
09:06:00 information, but it would have multiple lead numbers if you
09:06:06 will.

09:06:06 **Q.** And in your course of your response to that
09:06:10 particular discovery, or excuse me, the subparagraph J on
09:06:17 page eleven, did you with the assistance of anyone go
09:06:20 through those leads and examine what the status of them
09:06:25 was, the leads he said he didn't get?

09:06:27 **A.** Yes. I -- I -- best recollection, sir, is I
09:06:32 requested the assistance of someone to do it and in part I
09:06:35 did it, yes, best recollection.

09:06:36 **Q.** And what to your recollection was the -- was the
09:06:39 answer to those leads, and I don't want to go lead by lead
09:06:43 but in a specific general way.

09:06:45 **A.** Well, if I can just take a moment please.

09:06:48 (Whereupon, there was a pause in the
09:06:57 proceeding.)

09:06:57 **A.** My best answer as I testify here today would be in
09:07:03 my answer designated WWW, my paragraph twenty-eight, page
09:07:10 fifteen, responds to Attorney Walsh's paragraph J by

09:07:18 specific numbers, and then it continues on my paragraph twenty-eight, twenty-nine, thirty, thirty-one through thirty-two.

09:07:28 **Q.** And that's in evidence and we can let -- we can -- I suppose we can have -- the Court can review that at its leisure. In the process of going through this, did you make notes or did you receive notes from Investigator Whipple? You said you had his assistance in this?

09:07:46 **A.** Best recollection is yes, best recollection.

09:08:39 (People's Exhibit YYY was marked for identification).

09:08:41 **Q.** I'm going to show you what's been marked as People's Exhibit YYY and ask you if you recognize that.

09:09:47 (Whereupon, there was a pause in the proceeding.)

09:10:03 **A.** Yes, I recognize it.

09:10:05 **Q.** And what is it?

09:10:06 **A.** Well, YYY, first page appears to be a reproduction of Mr. Walsh's -- a portion of Mr. Walsh's motion which contains paragraph J which had his description of lead sheet numbers as page one, and then thereafter that there is a -- I didn't count them, but there's a series of pieces of paper stapled together where there's writing on them, and then after that in yellow are pieces of paper that are part of this that would be in my handwriting.

09:10:43 **Q.** And so what does it appear that that document relates to?

09:10:47 **A.** It -- it relates to as the work product associated with developing information so that I could respond to the motion of or demand for bill of particulars portion of Mr. Walsh's motion.

09:11:10 MR. MOODY: Judge, I previous given a copy of this to defense counsel. I show Exhibit YYY to defense counsel and and move it in.

09:11:18 MS. BIANCO: Judge, I'd like a brief voir dire.

09:11:20 THE COURT: Sure.

09:11:22 VOIR DIRE EXAMINATION

09:11:23 BY BIANCO:

09:11:24 **Q.** Mr. Dodd, on this particular document, YYY, there are two different handwritings in the notes. Could you look at the first page of -- the second page of the document. The first page is the reproduction of Judge Walsh's motion, is that correct?

09:11:41 **A.** Yes, a portion of his motion.

09:11:44 **Q.** A portion of his motion.

09:11:45 **A.** Yes.

09:11:45 **Q.** The second page is some handwritten notes. Is that your handwriting?

09:11:50 **A.** No.

09:11:51 **Q.** Whose writing is that?

09:11:53 **A.** It appears to be Investigator Whipple's. It appears to be. But I -- it appears to be.

09:12:00 **Q.** Is that something you were relying on in making your response, these handwritten notes by someone else?

09:12:07 **A.** I looked at the notes, but ultimately it was my decision to decide how to craft the answer. This was just a request for assistance, and the notes reflect something that was done by someone not me, but I would have looked at it, yes.

09:12:26 **Q.** Okay, so the same with these white sheets of paper, the next -- the next page which I'll call page three, that's in the same person's handwriting which is not yours, is that correct?

09:12:37 **A.** I'm sorry, page three?

09:12:39 **Q.** Page three of that document, there's no numbers on the document.

09:12:45 **A.** I -- yes, ma'am. Are you referring to a document that has a number eight one seven at the top or --

09:12:52 **Q.** I'm referring to a document --

09:12:54 **A.** Could you show me?

09:12:54 **Q.** Yes.

09:12:55 **A.** Thank you. Thank you.

09:13:05 **Q.** It starts with the top of the page five nine four. That's not your handwriting, correct?

09:13:10 A. To make it easy, no, none of those are.
09:13:13 Q. When you say none of those, does your handwriting
09:13:17 start on the yellow sheets of paper in this document?
09:13:21 A. Yes.
09:13:23 Q. Is all of these yellow notes on this document, is
09:13:27 that all in your hand, all of the remaining yellow sheets?
09:13:36 A. Yes.
09:13:38 Q. Including the final page?
09:13:50 A. Yes.
09:13:51 Q. And is it your testimony that you relied at least in
09:13:54 part on this other person's writings in crafting your
09:14:00 answers, is that fair?
09:14:01 A. I looked at it, but what I ultimately did was check
09:14:05 myself. This was merely to find out some information and
09:14:09 then ultimately I had to respond. It -- there was -- this
09:14:13 was but one aspect of a very large motion, miss, and I
09:14:16 asked someone to preliminarily look, but then I would have
09:14:19 looked also.
09:14:20 MS. BIANCO: I have no objection to the
09:14:22 document, Your Honor.
09:14:23 THE COURT: Thank you. YYY is in.
(People's Exhibit YYY was received in
evidence).
09:14:27 BY MR. MOODY:
09:14:37 Q. Now turning now back for a brief moment to the

09:14:40 motion that is I believe one-forty-two?

09:14:44 **A.** Yes.

09:14:44 **Q.** That is Judge Walsh's motion. In starting the -- at
09:14:48 page nine in what he entitled is a demand for bill of
09:14:52 particulars, it starts on you identified them as paragraph
09:14:55 thirty-three and then it has subparagraphs A through Z?

09:14:58 **A.** Yes.

09:14:59 **Q.** In a general sense, what are subparagraphs A through
09:15:07 Z?

09:15:07 MS. BIANCO: Objection to the general sense.
09:15:08 I think the document speaks to itself.

09:15:10 THE COURT: I'll allow it.

09:15:11 **A.** Well, it's paragraph thirty-three A through Z would
09:15:16 be a portion of Mr. Walsh's demand for a bill of
09:15:19 particulars is the way he cast it.

09:15:21 **Q.** What is he -- I guess the question I'm asking is
09:15:24 what is he -- what is in a general sense, what is he
09:15:27 demanding in those, what is he looking for?

09:15:29 **A.** Well, as to paragraph thirty-three A, it's a
09:15:35 statement of the exact time, date and location of the
09:15:37 alleged offense. As to paragraph B, a statement of names
09:15:40 and addresses of all prospective --

09:15:43 **Q.** Well, I'm going to stop you there. I was hoping not
09:15:44 to go through individually because the document -- let me
09:15:47 get at it this way. As you review A through Z, is there

09:15:52 any demand there for a -- for anything involving Heidi
09:15:56 Allen's status as confidential informant be it reports, be
09:15:59 it the file, be it anything?

09:16:01 **A.** One second, sir.

09:16:02 (Whereupon, there was a pause in the
09:16:16 proceeding.)

09:16:16 MS. BIANCO: Can we stipulate that it wouldn't
09:16:19 be any of the lead numbers because it didn't have a
09:16:21 lead because he's referring to lead numbers that were
09:16:24 provided. Can we stipulate that there was no lead
09:16:28 number on the confidential informant file so this is
09:16:30 clear?

09:16:31 MR. MOODY: I believe that's been testified
09:16:33 to. I don't know we need --

09:16:34 THE COURT: I don't think that's where you're
09:16:36 going with the line of questioning is it?

09:16:37 MR. MOODY: It's not really where I'm going
09:16:39 with the line of questioning, but -- but to answer her
09:16:41 question, it's been testified to. I don't know that I
09:16:43 need to stipulate to it.

09:16:51 **A.** Based upon my review of Attorney Walsh's paragraph
09:16:56 thirty-three A through Z, I don't see any demand for any
09:17:00 information associated with Heidi Allen purportedly being a
09:17:05 confidential informant or providing confidential
09:17:08 information.

09:17:08 **Q.** And do you know based on one-forty-three when Judge Walsh's motion was filed, that motion was filed?

09:17:17 **A.** Best recollection January thirteenth, received by the People, January seventeen, 1995, filed I believe January thirteen, 1995.

09:17:29 **Q.** And that would have been after all of -- well, not all of, but the five boxes that had been given both to -- to Judge Walsh and Judge Fahey, is that accurate?

09:17:46 **A.** After December fourteenth and before March twenty-first, yes.

09:17:50 **Q.** Now, in paragraphs A through Z of that motion, there are in addition to paragraph J which has a very extensive list of leads he's looking for, there are demands for other documents, is that accurate?

09:18:15 **A.** Yes.

09:18:15 **Q.** Okay. Now, going back to you said at one point you -- I believe you testified that you went through the -- well, maybe you didn't, so I'll ask it this way. At any point in time prior to the five boxes being turned over to Judge Fahey in December, did you take an opportunity to go through it yourself, the five boxes?

09:18:44 **A.** The five boxes.

09:18:45 **Q.** Yes.

09:18:46 **A.** The --

09:18:46 **Q.** From the Sheriff's Department that were eventually

09:18:49 copied.

09:18:50 A. Well, I went through the documents that made up the 09:18:54 police investigation report and all the attachments, and 09:18:57 then yes, I would have looked at the material that was put 09:19:04 into the boxes for attorneys Walsh and Fahey, yes, I would 09:19:08 have done that.

09:19:09 Q. And -- and to your recollection, did you take any 09:19:12 notes or document what you were doing at that point in 09:19:15 time?

09:19:16 A. Well, there's a file memorandum I created that I 09:19:20 believe I testified to that reflected what it is that I had 09:19:23 done, sir.

09:19:23 Q. Well, I guess what I'm asking is I'm talking about 09:19:26 handwritten notes as you were going through the box, boxes.

09:19:31 A. I don't have a recollection of any handwritten notes 09:19:34 as it relates to going through the boxes.

09:19:41 MR. MOODY: If I could get that marked.

09:20:20 (People's Exhibit ZZZ was marked for 09:20:22 identification).

09:20:23 Q. Showing you what's been marked as People's Exhibit 09:20:25 ZZZ.

09:21:02 (Whereupon, there was a pause in the 09:21:32 proceeding.)

09:21:32 A. Yes. I reviewed ZZZ, yes, sir.

09:21:34 Q. And what is ZZZ?

09:21:36 A. ZZZ in its entirety, in its entirety, I won't count the pieces of paper, it's a lot of pieces of paper.

09:21:45 Q. It's a pad that's all together?

09:21:46 A. That's true, in my hand, my notes. This was created by me for a particular purpose.

09:21:52 Q. And what purpose was that?

09:21:54 A. To make sure that all of the documentation went over to attorneys Walsh and Fahey when it was being reproduced. I created this document, and it reflects certain subheadings that are consistent with a file designation. By filing part of the Sheriff's Department investigation report would have files that would have a heading on it. For example, HA sightings, Heidi Allen sightings, and what I did was with Investigator Whipple in the room where the file was located created this list. The list would be all of the Sheriff's Department investigation report by file designation. This was then used by me to insure that every portion of the file was reproduced so that when the portion of the file was taken, the original file was taken and handed to the person who was going to reproduce it, I would check, and the checks are in my hand also, that that portion of the file had in fact been reproduced.

09:23:05 Q. All right, and is this the original?

09:23:08 A. Yes. That would have been done during --

09:23:15 MS. BIANCO: Objection. There's not even a

09:23:17 question at this point.

09:23:17 THE COURT: That's fine. We can wait for
09:23:20 followup question.

09:23:20 THE WITNESS: Yes, sir.

09:23:20 MR. MOODY: Judge, showing Exhibit ZZZ to
09:23:24 defense counsel, I move to admit.

09:23:26 MS. BIANCO: I'd like to voir dire the witness
09:23:27 if I could.

09:23:28 THE COURT: Yes.

09:23:29 VOIR DIRE EXAMINATION

09:23:30 BY MS. BIANCO:

09:23:31 **Q.** These notes that you created, you created by going
09:23:34 through each and every document in that file, the Sheriff's
09:23:40 Department original file, is that correct?

09:23:41 **A.** I created that list, miss, by looking at the
09:23:45 entirety of the file, and the Sheriff's Department file had
09:23:50 sub-files, it's one large file, and within the file itself
09:23:54 there were sub-files. The sub-files were identified by
09:23:59 heading, and the list reflects the headings that correspond
09:24:04 to the chronologic headings in the Sheriff's Department
09:24:09 file.

09:24:09 **Q.** And there was -- you went through each box, is that
09:24:13 right, to compose this list?

09:24:14 **A.** Yes.

09:24:15 **Q.** And box by box you designated like first box, second

09:24:20 box, third box, fourth box, in your notes, is that right?

09:24:24 A. I followed that procedure, yes.

09:24:26 Q. And you even did it in alphabetical order, isn't
09:24:29 that right?

09:24:30 A. I didn't do it in alphabetical order, miss, I did it
09:24:34 consistent with the manner in which the documents that were
09:24:37 in that portion of the Sheriff's Department file were
09:24:40 listed. I literally wrote down whatever it is would be the
09:24:45 first portion of box one, file designated Heidi Allen
09:24:50 sightings. The next portion, whatever it would be, and I
09:24:53 followed that chronology.

09:24:56 MS. BIANCO: Absolutely no objection.

09:25:06 BY MR. MOODY:

09:25:06 Q. Showing you Exhibit ZZZ.

09:25:09 THE COURT: ZZZ in without objection.

(People's Exhibit ZZZ was received in
09:25:13 evidence).

09:25:13 Q. If you could turn to the -- well, do you recollect
09:25:18 the date in which you did this or dates?

09:25:22 A. It being the creation of this list?

09:25:24 Q. Yes, this list.

09:25:25 A. I can tell you, I can respond by saying the general
09:25:28 time frame.

09:25:29 Q. Well, just see if we can get my question and we'll
09:25:33 go from there. Do you recall the specific date?

09:25:36 **A.** It -- no.

09:25:37 MS. BIANCO: Objection, Judge. He initially didn't even recall creating it. Now he's asking him about dates. Unless there is a date written on it.

09:25:43 THE WITNESS: I did --

09:25:44 THE COURT: Hold on a second. I'll allow the question.

09:25:46 **A.** This was created prior to December fourteen, 1994.

09:25:53 **Q.** I want you to turn if you could to the -- I guess it would be the second page, it has the first heading is evidence.

09:26:01 **A.** Yes.

09:26:01 **Q.** Is there a dates or dates on that, on that page?

09:26:06 **A.** 12/5, my hand.

09:26:09 **Q.** Okay, and then turning, going a couple pages later, I believe it would be page four starts I think that's pen register, is there a date or dates on that date?

09:26:19 **A.** There is. 12/5/94.

09:26:21 **Q.** Is that in your handwriting as well?

09:26:24 **A.** Yes. Everything is, all of this is in my handwriting.

09:26:27 **Q.** Turning now, moving down to well, the page that starts with Heidi Allen and then under it is Darlene Austin.

09:26:40 **A.** Yes, there -- I turned to that page, yes.

09:26:43 **Q.** Are there date or dates on that?

09:26:45 **A.** 12/5.

09:26:46 THE COURT: There is -- what's the point in
09:26:48 going through date by date?

09:26:49 MR. MOODY: Judge, my followup is does that
09:26:53 refresh your recollection as to the exact date you
09:26:53 might have done that.

09:26:54 **A.** On or about 12/5, 1994.

09:26:56 **Q.** Which would have been obviously before it was turned
09:26:59 over, is that accurate?

09:27:01 **A.** Yes.

09:27:02 **Q.** Would it -- to your recollection, would it have also
09:27:04 been before you had received the reports from Deputy
09:27:11 VanPatten, Deputy Anderson and Deputy Montgomery regarding
09:27:19 Heidi Allen's CI file?

09:27:21 MS. BIANCO: Objection. Now he's completely
09:27:23 leading the witness, directing him to an answer.

09:27:26 THE COURT: You can ask it in a non-leading
09:27:28 manner.

09:27:28 **Q.** Do you remember when you received Deputy Anderson's,
09:27:30 Deputy VanPatten's and deputy, or excuse me, let me ask it
09:27:35 this way. When they were received by the Sheriff's
09:27:38 Department when Deputy Anderson's, Deputy Montgomery and
09:27:42 Deputy VanPatten's three reports regarding the CI file were
09:27:46 received by the Sheriff's Department.

09:27:47 **A.** 12/9, 1994.

09:28:13 **Q.** Now with regard to -- I'll take back the other
09:29:19 exhibits you got in front of you. With regard to YYY which
09:29:30 I believe you identified as basically your work product in
09:29:34 responding to Judge Walsh's motion.

09:29:36 **A.** In part it is my work product, yes, in part.

09:29:39 **Q.** You identified, or excuse me, on the front page of
09:29:42 that there is -- you identified that as a photocopy of
09:29:45 what -- of a portion of Judge Walsh's motion, specifically
09:29:49 paragraph thirty-three, subparagraph J, correct?

09:29:52 **A.** Yes.

09:29:52 **Q.** Okay, there are some green marks on that paragraph.
09:29:58 Do you recognize those?

09:30:00 **A.** I see the green marks, yes.

09:30:01 **Q.** Do you recollect who made those?

09:30:07 **A.** I do not.

09:30:10 **Q.** Okay, if you could turn then to the first page of
09:30:16 what you identified as your handwritten notes with regard
09:30:20 to that document.

09:30:22 **A.** Yes.

09:30:23 **Q.** And if you could review just the top portion of that
09:30:25 and see if that refreshes your recollection as to who made
09:30:28 those notes?

09:30:28 **A.** It does.

09:30:29 **Q.** And who made those -- who made those green marks?

09:30:32 **A.** Me.

09:30:33 **Q.** And is there an explanation about what those green marks mean anywhere in Exhibit YYY?

09:30:41 **A.** The again, just referencing the yellow pieces of paper which would be my notes only, solid green equaled given out, and there's further writing by me associated with the numbers that are set forth in paragraph J.

09:30:57 **Q.** Now, turning back, and I apologize for jumping around a little bit but I want to make sure I cover everything. I'll take that back. Showing you again QQQ.

09:31:34 **A.** Yes.

09:31:34 **Q.** Which you had identified as a work product file copy that you have done of VanPatten, Anderson and Montgomery's statements. You had indicated that those documents were disclosed when to the -- to defense counsel?

09:31:55 **A.** They were disclosed to both defense attorneys. It was contained within the documents that specifically were given to Attorney Fahey December fourteen, 1994.

09:32:46 (Whereupon, there was a pause in the proceeding.)

09:34:03 **Q.** Showing you ZZZ again, in reviewing that document, did you make any notations with regard to Brady material in that document?

09:34:14 **A.** Yes.

09:34:16 **Q.** Once or a number of times?

09:34:18 **A.** A number of times. A number of times.

09:34:21 **Q.** All right, and then relaying that back to QQQ, you had indicated that you also made a note on QQQ about Brady material.

09:34:33 **A.** Yes, I did.

09:34:34 **Q.** Why did you do that both on ZZZ and on QQQ?

09:34:38 **A.** Part of my affirmative obligation was to make sure that attorneys Fahey and Walsh had any information or any property that may tend to be exculpatory, Brady material. When I was reviewing the documents, if arguably something fell within that definition of Brady material so that I identified it in the first instance when I was reviewing whatever the document would be, I would write the word Brady so that I would know that potentially it was Brady material, and I did that on QQQ, the statements of VanPatten, Anderson and Montgomery, and on ZZZ which is my work product I wrote Brady a number of times to make sure that I saw it, it was reproduced, it went over. By over I mean disclosed.

09:35:59 MR. MOODY: I have no further questions, Judge.

09:36:01 THE COURT: Ms. Bianco?

09:36:03 MS. BIANCO: Your Honor, do you think we can take a five-minute break so I can get my materials together?

09:36:07 THE COURT: That's fine. We'll reconvene at
09:36:09 9:40.

09:36:14 (Whereupon, there was a recess.)

09:47:58 THE COURT: Mr. Dodd, please. Mr. Dodd,
09:48:18 consider yourself still under oath sir.

09:48:19 THE WITNESS: Yes, sir.

09:48:20 THE COURT: Thank you.

09:48:21 RECROSS-EXAMINATION

09:48:21 BY MS. BIANCO:

09:48:22 **Q.** Mr. Dodd, on redirect examination you were asked
09:48:26 about document YYY and ZZZ. Do you remember those
09:48:31 documents?

09:48:32 **A.** You're holding them in your hands, and yes.

09:48:35 **Q.** Okay, and were these two documents used to -- to
09:48:40 create a response to Judge Walsh's motion that he filed?

09:48:46 **A.** No.

09:48:47 **Q.** They were not used at all to create the response to
09:48:49 the discovery motion?

09:48:50 **A.** Didn't say that. As to the document that would be
09:48:54 the -- can't remember the designation, it's all yellow.

09:48:59 **Q.** Let me show you --

09:49:00 **A.** Yes.

09:49:01 **Q.** Let me show you ZZZ. You said that this one was --

09:49:05 **A.** ZZZ.

09:49:06 **Q.** ZZZ. That's your handwritten notes about the topics

09:49:12 in the five boxes, correct?
09:49:15 **A.** Yes.
09:49:15 **Q.** Okay, and you said that you had made this document
09:49:20 was it on 12/5/94?
09:49:24 **A.** The date 12/5, 1994 appears on it. This document
09:49:29 reflects a work in progress over a number of days. The
09:49:33 amount of material that we photocopied was in excess of
09:49:36 twelve-thousand documents. This reflected a work in
09:49:41 progress document that started prior to the discovery being
09:49:46 turned over on December fourteen, 1994. It's not one day,
09:49:52 miss, this was not one day.
09:49:53 **Q.** Not one day, so that would reflect -- when's the
09:49:55 last time you wrote something on that? You said it's a
09:49:59 work in progress. Was that right up until the trial, that
09:50:02 particular document, were you still writing what was in the
09:50:04 the boxes?
09:50:05 **A.** No, ma'am. You misconstrue what it is.
09:50:08 **Q.** Well, I'm asking you when that document, when was
09:50:11 the last date you wrote on that document. When's the last
09:50:15 date?
09:50:15 **A.** The last date I wrote something on it?
09:50:18 **Q.** Yes.
09:50:20 **A.** My best recollection would be that this document was
09:50:28 utilized --
09:50:29 **Q.** I'm asking you for the date.

09:50:31 A. Ma'am --

09:50:31 THE COURT: He's trying to answer the question.

09:50:33 A. My best recollection as it relates to when I last wrote on this would be prior to December fourteen, 1994, best recollection.

09:50:45 Q. Best recollection.

09:50:46 A. Yes.

09:50:47 Q. Okay, may I see that for a second?

09:50:49 A. Sure.

09:50:51 Q. In this particular document --

09:51:08 THE COURT: Which document?

09:51:09 Q. I'm talking about ZZZ, and I'm going to show you the particular page, I'm going to show you a document on the top of it, it says, "sightings, Brady." Do you see that where it says that?

09:51:52 A. As part of ZZZ, yes.

09:51:55 Q. Do you see that?

09:51:58 A. I said yes.

09:51:58 Q. Okay, on the bottom, the very last line on that document, you have leads listed twelve oh-one to fourteen-hundred, is that right? That particular page.

09:52:10 A. On that particular page, yes.

09:52:13 THE COURT: Twelve oh-one to what?

09:52:14 THE WITNESS: Fourteen-hundred.

09:52:15 THE COURT: Thank you.

09:52:16 **Q.** Fourteen-hundred.

09:52:17 THE COURT: For the Court's reference, what page are you into on Z? Can you just simply count?

09:52:23 THE WITNESS: Yes, I can count.

09:52:25 THE COURT: Thank you.

09:52:27 THE WITNESS: Judge, that would be on the fifth page.

09:52:29 THE COURT: Thank you.

09:52:30 THE WITNESS: From ZZZ.

09:52:32 THE COURT: Thank you.

09:52:32 **Q.** Well, wasn't the lead fourteen-hundred created on 4/28/95, and I'd like to show you your list of leads.

09:52:43 MS. BIANCO: I'd like to have this marked. One-sixty-four.

09:53:23 (Defendant's Exhibit No. 164 was marked for identification).

09:53:29 **Q.** Now showing you what's been marked Defendant's Exhibit 164, could you review that to yourself please?

09:53:37 (Whereupon, there was a pause in the proceeding.)

09:53:44 **A.** Yes.

09:53:44 **Q.** You would agree that during the course of this case, a list of leads was created numbering each lead, the date it was received and what the lead was, would you agree with

09:53:55 that?

09:53:56 **A.** There were a list of lead numbers created by Investigator Whipple, and then in addition to that, however, there would be distinction between a lead number and a lead sheet. I see numbers here.

09:54:15 **Q.** Okay, and the number there, well, have you ever seen that document before? It's date stamped by the Sheriff's Department isn't it?

09:54:24 **A.** Well, miss, I'm reviewing something that's got a date stamp of January fifth, 1995 and I haven't seen this in a bit.

09:54:30 **Q.** Are you sure it says January or June?

09:54:34 **A.** Thank you, ma'am. June fifth of 1995.

09:54:36 **Q.** And you reviewed every single document?

09:54:39 **A.** Ma'am, I haven't --

09:54:40 THE COURT: He's trying to review it right now, Ms. Bianco. Give him some time.

09:54:51 **A.** I've reviewed one-sixty-four, yes.

09:54:54 **Q.** And you did review every single document in the created file of the Sheriff's Department, correct?

09:55:00 **A.** Yes.

09:55:00 **Q.** Okay, now on that particular list, isn't fourteen-hundred the -- isn't that created on April twenty-eighth, 1995?

09:55:18 **A.** I see fourteen-hundred and then I see handwriting by

09:55:22 someone and I see a different date. Yes.

09:55:26 **Q.** The date is what?

09:55:28 **A.** 4/28, 1995. This is not in my hand, miss.

09:55:32 **Q.** Okay, so this -- this log that says received Oswego County Sheriff's Department, this wouldn't be an accurate log?

09:55:39 **A.** I didn't say that. I said that this is a document that I'm reviewing, having not seen it probably for twenty years, and its writing, it has certain lead numbers, it has certain names, it has certain dates. It is not in my hand.

09:55:56 **Q.** Okay, well, I'd like to show you another --

09:55:59 MS. BIANCO: I'd offer that. It's from the Sheriff's Department's file, it's date stamped, it was provided to us by the prosecutor.

09:56:06 THE COURT: Any objection?

09:56:08 MR. MOODY: No objection.

09:56:09 THE COURT: Is that 162?

09:56:12 THE WITNESS: One-six-four, Your Honor.

09:56:13 THE COURT: One-six-four is in.

(Defendant's Exhibit No. 164 is received in 09:56:15 evidence).

09:56:15 MS. BIANCO: I'd like this marked as 165 please if I could.

09:56:49 (Defendant's Exhibit No. 165 was marked for 09:56:56 identification).

09:56:56 Q. Could you take a look, Mr. Dodd, at Exhibit YYY again, the first page which is paragraph J, the last numbered lead. What lead is that?

09:57:09 A. The number I see here is what appears to be one-four-oh-nine.

09:57:13 Q. One-four-oh-nine. Are you looking at paragraph J?

09:57:18 A. On Exhibit 164, I'm sorry.

09:57:20 Q. No, YYY.

09:57:22 THE COURT: YYY, sir.

09:57:24 THE WITNESS: I don't have YYY.

09:57:27 Q. Did I take it back from you? I'm not sure.

09:57:29 A. I don't have it.

09:57:34 THE COURT: I'm not sure if you gave him YYY. You took it back.

09:57:38 Q. I have it, YYY, okay (handing).

09:57:42 A. Okay, I have YYY.

09:57:45 Q. Okay, the number of the last lead in paragraph J, what's the number of that?

09:57:53 A. In paragraph J, this is Attorney Walsh's paragraph, is one-three-six-seven within paragraph J.

09:58:01 Q. And was it your testimony that you reviewed -- you reviewed materials before that -- strike that. On ZZZ.

09:58:17 A. Yes.

09:58:17 Q. This was done on December fifth?

09:58:20 A. Again, I explained to you, miss, no. There are

09:58:24 dates that appear December fifth, 1994. There were twelve-
09:58:29 thousand documents at least, twelve-thousand documents that
09:58:33 were photocopied. That did not happen in a day. This was
09:58:37 a document that was over days when there was a reproduction
09:58:43 of the twelve-thousand plus documents. This ZZZ was the
09:58:50 document that I created for the purposes of being
09:58:52 systematic and organized to verify it. What it is that we
09:58:57 had, what was being photocopied, to be able to, for
09:59:01 example, if this day ever came, be able to refresh my
09:59:04 recollection.

09:59:05 **Q.** Well, would you agree that since you have listed on
09:59:08 this document ZZZ on page three, excuse me.

09:59:19 MR. MOODY: Three or five?

09:59:20 **Q.** Page five, twelve oh-one to fourteen-hundred that
09:59:24 you were at least writing on this document in April of
09:59:29 1995, would you agree with that, in light of the number
09:59:32 fourteen-hundred lead which was created on -- in April?

09:59:39 **A.** No, ma'am. You misunderstood it. I have to explain
09:59:42 it this way. It's the only way I can --

09:59:44 **Q.** I'll ask you another question. Were you still --
09:59:46 this is --

09:59:47 MR. MOODY: Judge, he's trying to answer the
09:59:48 question and she doesn't want him to.

09:59:50 MS. BIANCO: No, he's non-responsive, Judge.
09:59:52 He's answering what he wants.

09:59:53 THE COURT: He's very responsive, Ms. Bianco.
09:59:56 Go ahead.

09:59:57 MR. MOODY: Could he finish?

09:59:58 THE COURT: Yeah.

09:59:58 **A.** The lead number comes in at a certain time. If a 10:00:05 lead sheet is tasked by Investigator Whipple, again, this 10:00:09 wasn't I, tasked by Investigator Whipple, there would be 10:00:12 the lead number put on a lead sheet, so for example 10:00:16 one-sixty-four you handed me, it has numbers, and then 10:00:20 you're referencing certain dates. That does not mean 10:00:23 that's the date the lead came in. That means -- it could 10:00:27 be -- it could mean a number of things. You'd have to look 10:00:29 to the lead itself. It could be the date that the officer 10:00:32 did something or supplied something.

10:00:36 MS. BIANCO: Judge, we're in the process of 10:00:37 trying to print out that particular lead sheet right 10:00:40 now so I can get back to that.

10:00:42 THE COURT: That's fine.

10:00:44 MS. BIANCO: If you don't mind.

10:00:46 THE COURT: That's fine.

10:00:47 **Q.** On ZZZ, this detailed and systematic and organized 10:00:53 document that --

10:00:55 MR. MOODY: Objection, Judge.

10:00:55 THE COURT: Ms. Bianco, let's not editorialize 10:00:59 please.

10:00:59 **Q.** Show me where in this twenty-two page document, where you list confidential informant information on Heidi Allen, anywhere in this twenty-two page document written in your own hands. Do you have ZZZ up front?
10:01:02
10:01:06
10:01:10

10:01:15 **A.** I'm looking at it as we speak, miss.

10:01:26 (Whereupon, there was a pause in the proceeding.)
10:03:17

10:03:17 **A.** Police reports. Page one, two, three, page four, police reports.
10:03:22

10:03:24 **Q.** That's how you itemize the -- the confidential informant documents as police reports?
10:03:27

10:03:29 **A.** That's what they were, miss. They were reports of the Oswego County Sheriff's Department, the police report of the Oswego County Sheriff's Department, so it's as clear as I can make it, the Sheriff's -- I'm answering the question. The Sheriff's Department investigation report contained the typed or handwritten reports, the supplemental reports of police officers with the Sheriff's Department, and any statements that the police officer may have created associated what he or she may have done and any notes that they may have taken that were part of police reports. The documents that specifically Heidi Allen was referenced as providing confidential informant clearly are police reports of the Oswego County Sheriff's Department, and they were contained within that portion of the file and
10:03:33
10:03:38
10:03:41
10:03:45
10:03:50
10:03:55
10:03:58
10:04:01
10:04:06
10:04:10
10:04:14
10:04:19
10:04:22

10:04:26 in my original hand on page -- page four, designation police reports, green check. That documentation, green check, meant it was photocopied and turned over. That was part of the police report, and it was turned over to Attorney Fahey. That's where it is.

10:04:47 **Q.** I want to show you the last page of this document.

10:04:52 **A.** ZZZ.

10:04:53 **Q.** ZZZ which is written in your own hand. Do you itemize the different police officers from the Oswego County Sheriff's Department, do you itemize the officers one by one?

10:05:06 **A.** Those --

10:05:07 **Q.** Yes or no?

10:05:08 **A.** It's not a yes or no answer.

10:05:09 MS. BIANCO: Judge, this is as clear as a yes or no question as I can possibly ask.

10:05:14 THE COURT: Hold on. Hold on. He can answer it yes or no. You can then redirect. Recross.

10:05:27 **Q.** So my question to you, sir, is -- well, let me ask you specific one by one. Do you list an individual by the name of Bill Cromie on the last page of ZZZ, yes or no?

10:05:40 **A.** I wrote the name Bill Cromie which reflects a portion of the file that was as I've indicated earlier in the entirety of the file there were sub-files for lack of a better description. There was a sub-file with the name

10:05:57 Bill Cromie. I wrote down what it is that was within the overall file. There was one heading entitled Bill Cromie, yes.

10:06:06 **Q.** And there was another subheading. Bill Cromie is -- was a member of the Oswego County Sheriff's Department, correct?

10:06:12 **A.** He absolutely was, yes, ma'am.

10:06:14 **Q.** Jeff Biznik (ph), he was a member of the Sheriff's Department, correct?

10:06:17 **A.** At the time, yes, ma'am.

10:06:19 **Q.** And he had an individual file, sub-file here you list?

10:06:21 **A.** I've got his name down, yes.

10:06:23 **Q.** Okay, Dean Goodsell, part of the Sheriff's Department?

10:06:25 **A.** Yes.

10:06:26 **Q.** And he was listed individually wasn't he?

10:06:29 **A.** There was a file with his name on it, yes.

10:06:31 **Q.** Sumner --

10:06:32 **A.** Hall.

10:06:33 **Q.** Hall, Sheriff's Department?

10:06:35 **A.** Yes.

10:06:35 **Q.** Individual file you listed?

10:06:36 **A.** Yes.

10:06:37 **Q.** Nick Kleist, individual file?

10:06:40 A. Yes.

10:06:41 Q. Fred Linny, individual file?

10:06:45 A. Ling, yes. Robert Lighthall.

10:06:52 Q. Robert Lighthall, was he with the Sheriff's Department?

10:06:53 A. Yes.

10:06:54 Q. And he made -- you had a note that he had an individual file?

10:06:57 A. I wrote down --

10:06:58 Q. I'm asking if you have this note.

10:07:00 A. I -- it speaks for itself. I -- I wrote the names that appear on it, miss.

10:07:05 Q. Okay, and I want to go through the names. Ralph Scruton, you have his name individually don't you?

10:07:09 A. Speaks for itself.

10:07:10 Q. Is that a yes?

10:07:11 A. Yes.

10:07:12 Q. Reuel Todd, individual file?

10:07:16 A. The name appears on the last page of the exhibit, yes.

10:07:19 Q. Rodney Watson, individual file?

10:07:22 A. Appears on the last page of the exhibit, yes.

10:07:24 Q. Terry Whipple, individual file?

10:07:26 A. Yes. It appears on the last page of that exhibit.

10:07:31 Q. Dale Yager, same thing, individual file?

10:07:35 **A.** Appears on the last page of that page, yes.

10:07:36 **Q.** Herb Yerdon, correct?

10:07:37 **A.** Yes, that also appears.

10:07:39 **Q.** And you have little green check marks next to all of
10:07:41 those documents, all those names, correct?

10:07:43 **A.** I have check marks, yes.

10:07:45 **Q.** And that means that was given to the defense,
10:07:47 correct?

10:07:48 **A.** This was -- to best answer your question, to fairly
10:07:54 answer your question, the actual file had the green check
10:08:01 marks on it. This was merely something I was using to
10:08:06 insure that we were reproducing the twelve-thousand plus
10:08:11 documents of the file so the original file would have the
10:08:14 green check that appeared on that original file. This was
10:08:19 a document that I used to insure that that portion of the
10:08:24 file was identified by me because there's a vast volume.

10:08:27 **Q.** Right, and that's why you separated in your notes
10:08:31 each section by boxes, correct, because you wanted to be
10:08:34 detailed.

10:08:35 **A.** I didn't separate anything.

10:08:37 **Q.** Well, did you --

10:08:38 **A.** Do you want me to answer the question? I'll answer
10:08:40 it.

10:08:40 **Q.** In your notes.

10:08:41 **A.** In my notes.

10:08:42 **Q.** Did you write on the top of the first page first box?

10:08:45 **A.** Sheriff's Department first box, yes.

10:08:48 **Q.** And so in that first page of notes are all of the individual files contained in the first box, yes?

10:08:55 **A.** I believe yes.

10:08:57 **Q.** Okay, so in your notes, you tried to separate box by box what the individual files was, is that fair?

10:09:04 **A.** I wrote down the files that I saw in the boxes and correlated to the box I was looking at, yes, again, because of the volume.

10:09:17 **Q.** Nowhere on the individual files on that list do you have anything by Investigator Montgomery, nowhere on that list Investigator Montgomery, Defendant's Exhibit 8, it's not referenced there is it?

10:09:33 **A.** It is referenced there. As I said before, it's referenced under police reports. It's a report of a police officer.

10:09:39 **Q.** Wasn't that an internal memo?

10:09:42 MR. MOODY: Objection, Judge. He's described it. She wants to argue whether --

10:09:46 THE COURT: Right. It's argumentative.

10:09:47 MR. MOODY: He's describing it as he's described it.

10:09:50 THE COURT: I will sustain.

10:09:50 **Q.** So for some police officers you have individual
10:09:52 files and for some you just throw them in a big category
10:09:56 police reports?

10:09:56 MR. MOODY: Objection, Judge. That's
10:09:58 argumentative.

10:09:58 THE COURT: Sustained.

10:09:59 MR. MOODY: He didn't divide these files up as
10:10:02 he's explained.

10:10:03 THE COURT: Sustained.

10:10:03 **Q.** Well, would you agree that there are no individual
10:10:07 files listed in your own handwritten notes that reference
10:10:13 Deputy VanPatten, individual file reference that says
10:10:17 Deputy VanPatten.

10:10:18 **A.** On -- on -- you're referencing ZZZ?

10:10:21 **Q.** ZZZ.

10:10:22 **A.** Yes, ma'am. One second.

10:11:24 (Whereupon, there was a pause in the
proceeding.)

10:11:53 **A.** I've inspected all of ZZZ. I did not write down
10:11:56 Chris VanPatten, no.

10:11:57 **Q.** Okay, would you also agree on ZZZ that there is no
10:12:02 individual file marked specifically Deputy Anderson. Would
10:12:07 you agree with that statement?

10:12:10 **A.** Well, I could look through it all again but I don't
10:12:13 believe I saw it, miss. I did not write down Anderson. I

10:12:16 don't see that.

10:12:16 **Q.** Okay, and the same question in regards to
10:12:22 Montgomery, he's not listed individually is he in your ZZZ
10:12:26 handwritten notes?

10:12:27 **A.** I don't see the name Montgomery. Actually there was
10:12:30 a Montgomery but it's a different Montgomery.

10:12:33 **Q.** Okay, thank you, sir.

10:12:35 **A.** I don't see the name Michael Montgomery that you're
10:12:38 referencing, no, I didn't write down Michael Montgomery.

10:12:42 **Q.** Okay. Now I want to direct your attention now to
10:12:52 Exhibit YYY. Do you have that one up there?

10:12:55 **A.** Yes.

10:12:56 **Q.** Or did I take it back. Okay. Was YYY, the document
10:13:02 you used, the notes by another person and the yellow notes,
10:13:06 was that a document you used to create the response for
10:13:11 Judge Walsh's motion paragraph J, the one we talked about,
10:13:17 the alleged missing lead sheets. Did you use this document
10:13:21 in order to create your response?

10:13:22 **A.** I reviewed what it is that apparently was created by
10:13:28 Investigator Yerdon, correction, Investigator Whipple, but
10:13:34 principally it would have been my notes, and looking at my
10:13:37 notes, which was merely a portion of the work product.
10:13:41 This -- my notes and those notes were just be a portion of
10:13:45 the work product. Ultimately my responsibility was to
10:13:48 craft the response which I did.

10:13:51 **Q.** Okay, and was it your testimony on Wednesday that every lead that Attorney Walsh claimed he did not get, that you had actually already provided in December, was that your testimony?

10:14:08 **A.** You've asked me to recall one portion of my six hours of testimony from Wednesday and I'm afraid I just can't recall that part.

10:14:15 **Q.** Okay. Well, let me ask you the question again. Is the leads that Attorney Walsh claimed he didn't receive, the hundred and forty leads that he claimed he didn't receive, is it your testimony now today that he received all of those in December of 1994, is that your testimony?

10:14:38 **A.** My testimony is that the response to the motion submitted by Attorney Walsh would have to speak for itself as to the specific numbers, Ms. Bianco. Referencing paragraph J, to answer it fairly, referencing paragraph J, there are a number of numbers.

10:14:56 **Q.** Yes, very true.

10:14:58 **A.** My response that would have been in February of 1995 would reflect the best recollection and the clearest recollection as it relates to those particular numbers. I can't testify here today as to these particular numbers. I -- it just -- I can testify as to Heidi Allen as a confidential informant, whether or not she was, I can testify to Mr. Breckenridge, the things Mr. Fahey

Timestamps by line: 10:13:58, 10:14:05, 10:14:07, 10:14:11, 10:14:14, 10:14:20, 10:14:24, 10:14:28, 10:14:33, 10:14:41, 10:14:45, 10:14:51, 10:14:54, 10:15:05, 10:15:08, 10:15:14, 10:15:17, 10:15:22, 10:15:25

10:15:30 referenced in his deposition. These, however, is not something that I have a clear enough recollection of today to be able to testify reliably.

10:15:40 **Q.** Okay, so would it be fair to say that you're unsure whether all of those leads were provided, the leads that Attorney Walsh cited in his motion, part J, were all -- you're unsure whether they were provided in December of 1994?

10:15:57 **A.** No, I didn't say that. I said my motion would have to speak for itself. I can testify in response to that question that I believe in my motion response to JJJ, I listed three -- three-quarters of the numbers that he listed in J as having been turned over.

10:16:21 **Q.** Um hum?

10:16:22 **A.** And that there were also numbers that he honestly thought existed but did not. For example, in JJJ which I'm looking at, if memory serves correctly, he cited that he had not received number six-five-zero through six-six-nine. Because I refreshed my memory by looking at my motion response, I saw that there were no lead numbers six-five-zero through six-six-nine, that there were -- that the best response to JJJ would be reflected in my motion response, ma'am.

10:17:00 **Q.** Okay, now in Exhibit YYY, in your portion of the handwritten notes, and I would direct your attention to

10:17:12 page seven of the entire document.
10:17:15 **A.** Seven?
10:17:16 **Q.** At the very bottom.
10:17:18 **A.** Are you talking about the yellow pages?
10:17:20 **Q.** Yellow pages.
10:17:21 **A.** Thank you. Yes.
10:17:32 **Q.** You have a notation nine-eight-nine, one-oh-nine-
10:17:36 five, not given to defendant attorney.
10:17:40 THE COURT: Could you say that again? Nine-
10:17:42 eight-nine --
10:17:42 **Q.** Nine-eight-nine to one-oh-nine-five, not given to
10:17:47 defendant attorney.
10:17:48 **A.** I'm looking at the page that you've referenced and
10:17:52 that doesn't contain that.
10:17:54 **Q.** Look at the very top of the page, you see if we're
10:17:57 on the same page. It says solid green equals given out.
10:18:04 Circled green, duplicate.
10:18:07 **A.** And given over.
10:18:09 **Q.** Okay, so on the bottom of that page, nine-
10:18:13 eighty-nine, and it says dash-one oh-nine-five it looks
10:18:16 like, not given to defendant attorney. Is that your
10:18:20 handwriting?
10:18:20 **A.** I'm looking at the first page of the yellow portion.
10:18:24 I see nine-eighty-nine, and again, this would be work
10:18:28 product at the time, doesn't mean it's the final work

10:18:31 product, it means something that I was using to assist me
10:18:35 in crafting the final response. Again, the final response
10:18:38 has to speak for itself. Written here nine-eighty-nine was
10:18:43 assigned a lead number and placed in followup, but no
10:18:47 followup, so it -- as I said before, there was a lead
10:18:51 number, but if -- there may not have been a lead sheet.
10:18:55 There's a distinction between a lead number and a lead
10:18:58 sheet so it -- the note I have written down here is that
10:19:02 there was no followup done.

10:19:04 **Q.** It also says "not given to defendant attorney,"
10:19:06 correct?

10:19:06 **A.** Because there was nothing done. It's a lead number
10:19:10 as opposed to a lead sheet. If there was nothing done,
10:19:13 there's nothing to give over if there was nothing done.

10:19:17 **Q.** And speaking of the actual lead sheet --

10:19:22 THE COURT: Before you go on, Ms. Bianco, you
10:19:24 referenced page seven. What yellow page is that? Is
10:19:27 that page one?

10:19:28 MS. BIANCO: It's on the very top, it says
10:19:30 "solid green."

MR. MOODY: First yellow page.

10:19:32 MS. BIANCO: Yes, looks like the first yellow
10:19:34 page.

10:19:34 THE COURT: It's the first yellow page, okay.

10:19:53 **Q.** And were you crafting your answer based on the lead

10:19:57 numbers and the lead sheets?

10:19:59 **A.** Do you mean this portion of my response?

10:20:02 **Q.** Yes.

10:20:02 **A.** It's an overall large motion. This was one part of
10:20:06 the motion.

10:20:06 **Q.** Um hum.

10:20:06 **A.** The final work product which would be my motion
10:20:10 answer would have to speak for itself. I was referencing
10:20:15 in part what I've done. Again, this was merely a part of
10:20:18 it, it's a work in progress, it's not the finished work
10:20:21 product. The finished work product would be the finished
10:20:24 work product. There could be additional information I
10:20:27 obtained, that there's nothing written on this because it's
10:20:30 after I created these notes. This was literally to assist
10:20:33 me in formulating as best I could an accurate response to
10:20:38 the particular portion of Attorney Fahey, or correction,
10:20:42 Attorney Walsh's demand for bill of particulars.

10:20:45 **Q.** Well, a lead sheet, in your words, did you tell
10:20:54 this, when the Court asked you what exactly a lead sheet
10:20:57 is, on December eighth, 1994, the Court asked you what a
10:21:01 lead sheet was, and you said, tell me if this is true --

10:21:04 **A.** Ma'am I, have no idea what you're -- December eighth
10:21:06 of 1994? You ask me if I remember something from December
10:21:10 eight of 1994?

10:21:11 **Q.** The motion argument, the --

10:21:13 **A.** Okay, you're asking me about the motion argument.
10:21:15 Yes, ma'am.

10:21:15 **Q.** Yes. Did you tell the Court that a lead sheet as it
10:21:19 applies to this particular case is a series of papers that
10:21:24 are stapled together, and as leads from whatever source
10:21:27 they may be, whether they be telephone leads where an
10:21:34 individual calls in and identifies themselves or calls in
10:21:36 to the police station, that person's name would be written
10:21:39 down and then a number would be assigned and that would be
10:21:42 established as a lead, and then action, thereafter, in
10:21:46 terms of what action if any was taken, sometimes it was
10:21:50 written down on a lead sheet. Would that be a fair
10:21:53 assessment of what a lead sheet is?

10:21:55 **A.** I have to look at the documents. Are you reading
10:21:57 from a transcript?

10:21:58 MS. BIANCO: Page two to page three. I'm
10:22:00 going to show you -- do you want me show him the actual
10:22:04 exhibit? I have these taken out of the exhibit.

10:22:06 THE COURT: Can you find them in the exhibit?

10:22:08 MS. PEEBLES: Exhibit 6, the hearing
10:22:10 transcript.

10:22:10 MS. BIANCO: I have Exhibit 6.

10:22:12 THE COURT: Two through three on Exhibit 6.
10:22:14 Probably best, Ms. Bianco, to show him the actual
10:22:19 exhibit.

10:22:28 **A.** What page am I looking at?

10:22:30 **Q.** Pages two to three please.

10:22:32 **A.** Thank you.

10:22:33 THE COURT: All of two or a portion of two?

10:22:35 MS. BIANCO: The bottom of two to the top of
10:22:38 three.

10:22:38 THE WITNESS: One second, Your Honor.

10:22:39 THE COURT: Sure.

10:22:40 (Whereupon, there was a pause in the
10:23:08 proceeding.)

10:23:08 **A.** I've read page two and page three, yes.

10:23:10 **Q.** Okay, would that have been an accurate description
10:23:13 of what a lead sheet was?

10:23:14 **A.** It speaks for itself, miss. The -- it was a
10:23:17 response -- no. Would it be a complete description?
10:23:21 Absolutely not. This is merely a portion of oral argument.
10:23:25 This is amongst a number of issues that are being orally
10:23:29 argued so that I would have said something in response as
10:23:32 part of oral argument to one aspect of the overall motion,
10:23:36 but to correctly answer and completely answer the question,
10:23:40 as I've said, there's a difference between a lead number
10:23:43 and a lead sheet. This in part describes lead sheets and
10:23:46 actions that could occur which is different from a lead
10:23:49 number, so this is not a complete description to answer
10:23:52 your question of what a lead sheet and a lead number is,

10:23:54 no.

10:23:54 **Q.** Didn't the presiding judge specifically ask you --

10:24:01 THE COURT: Page reference?

10:24:02 **Q.** I'm going to reference page two. The Court: "With
10:24:08 respect to the arguments of the motions, before we begin,
10:24:12 would you tell me what it is that you mean by a lead
10:24:16 sheet." Didn't he ask specifically what a lead sheet was?

10:24:19 **A.** Well, miss, if it says it I accept it says it.

10:24:22 **Q.** You're not saying you in any way gave an incorrect
10:24:26 answer to the presiding judge.

10:24:28 MR. MOODY: The answer's reflected in the
10:24:30 transcript.

10:24:31 THE COURT: Sustained.

10:24:35 **Q.** Let's talk about the CI documents again. You
10:24:39 acknowledge yesterday during Mr. Moody's direct examination
10:24:43 that you considered those documents Brady material and
10:24:46 that's why you turned them over, correct?

10:24:49 MR. MOODY: Actually I think it was Wednesday.

10:24:52 **Q.** I'm sorry, Wednesday, you acknowledge that was Brady
10:24:54 material.

10:24:54 **A.** You're specifically referencing the police reports
10:24:57 of Investigator VanPatten, Anderson, Montgomery, Lortie, is
10:25:02 that correct?

10:25:02 **Q.** As well as the entry, the card itself. I'll show
10:25:08 you the exhibit.

10:25:09 A. And the card.

10:25:19 Q. People's Exhibit B. (Handing).

10:25:46 A. Am I waiting for a question?

10:25:48 Q. I'm asking you for an answer. Did you consider all of those reports as well as the documents in Exhibit B Brady material?

10:25:57 A. In Exhibit B, there is a portion of Exhibit B that appears to fall within the definition of Brady material. Specifically, it would be the photograph of Heidi. And also a three by five index card that has Heidi Allen and descriptors on the front and on the back, apparent fingerprint impressions. The other documents appear just to be field notes or notes of individuals. These two portions are of -- are of Heidi Allen, and then also to answer your question, the reports of Investigator Anderson VanPatten, Lortie, Montgomery, yes.

10:26:45 Q. Okay, there's also in People's Exhibit B some -- some notes that are written regarding drug information and names. You've seen that before haven't you?

10:26:57 A. Well, it's compound, but I see -- I see names, miss, contained within B, and I've looked at the other portions of Exhibit B, it's -- I don't know whose handwriting it is. It just appears to have various things that are written down, miss.

10:27:45 Q. Okay, did you ever see that, those notes before?

10:27:50 **A.** By the notes you mean the writings?

10:27:51 **Q.** Yes, those writings, did you ever see them before?

10:27:54 **A.** I would have seen them. They would have been in
10:27:56 evidence. They're in an evidence bag.

10:27:59 **Q.** Now, when you stated earlier that when you were
10:28:04 constructing your response to Judge Walsh's motion, the
10:28:13 discovery motion, and also the motions by Judge Fahey, you
10:28:17 wrote a letter dated December twenty-first, 1994, and that
10:28:22 was Defendant's Exhibit 13, and I can show you that again.

10:28:27 **A.** Thank you.

10:28:51 (Whereupon, there was a pause in the
10:29:01 proceeding.)

10:29:01 **A.** I have reviewed thirteen, yes.

10:29:05 **Q.** And that was written on December fourteenth,
10:29:07 correct?

10:29:07 **A.** No. Well, it's -- the date appears December
10:29:09 twenty-first, 1994.

10:29:10 **Q.** I apologize, December twenty-first. Is that when it
10:29:13 was -- that was when the last time you signed it on that
10:29:16 date, correct?

10:29:16 **A.** That's the date at the top of the letter.

10:29:18 **Q.** Okay, and would you agree that you used the
10:29:22 information contained in the People's Exhibit YYY, the
10:29:27 handwritten yellow notes and the handwritten notes from
10:29:31 Investigator Whipple in determining what your response was

10:29:35 going to be?

10:29:35 A. No, not in this at all. You're misconstruing this.
10:29:38 This is just prior to that. This is December twenty-first,
10:29:41 1994, this letter. The document you held in your hand was
10:29:44 part of the work product that would be the motion response,
10:29:47 I believe I wrote if I recall correctly, motion response
10:29:51 was February eleventh, 1995. Exhibit 13 is two and a half
10:29:56 months prior to that date.

10:29:59 Q. But on December twenty-first, you would have had the
10:30:07 reports by investigators Anderson, Montgomery and VanPatten
10:30:13 regarding the confidential informant files, right?

10:30:16 A. Yes.

10:30:16 Q. You had those.

10:30:17 A. Yes.

10:30:18 Q. Do you specifically say in your letter, and I'm
10:30:21 going to need that for a second. Thank you, sir.

10:30:25 A. Yes.

10:30:25 Q. On page three are you specifically directing the
10:30:35 attorneys to information that you contend could be possibly
10:30:42 so-called Brady material. You may wish to consider that
10:30:46 portion of the following that deals with the following.
10:30:49 I'm going to show you this.

10:30:50 A. Yes, if I could look, review it please.

10:30:54 Q. And I'm referring to paragraph -- paragraph five.

10:31:05 MR. MOODY: They're not numbered. Are you

10:31:07 saying the fifth paragraph?
10:31:08 MS. BIANCO: Fifth paragraph on that -- on
10:31:09 that page.
10:31:10 **A.** It's page three of the exhibit, it's the bottom
10:31:13 paragraph five. Paragraph five is after paragraph three
10:31:22 which identifies in response to the demand for Brady
10:31:26 material. The paragraph three, four, correction, three,
10:31:32 four, five and six all deal with Brady response.
10:31:37 **Q.** Right, and you --
10:31:38 **A.** All of it.
10:31:38 **Q.** You were directing, trying to show the attorneys
10:31:41 where, because it's such a voluminous file, where there may
10:31:47 be Brady material, and you're specifying things aren't you?
10:31:49 **A.** What I did is first it's the affirmative obligation
10:31:53 to disclose the evidence or information property that may
10:31:57 tend to be exculpatory. If I believed it was Brady
10:32:00 material, it was my affirmative obligation to disclose it.
10:32:05 I did so in this particular letter dated December
10:32:10 twenty-first, 1994 starting in paragraph three, in the
10:32:14 motion presently filed in County Court, you demanded all
10:32:17 Brady material. Thereafter, I listed everything that
10:32:22 potentially could be Brady material. They ultimately
10:32:25 decide whether or not it's Brady material, I don't in the
10:32:28 first instance, I make a determination preliminarily, but
10:32:31 they have to decide whether or not it would tend to assist

10:32:34 them in their own defense, and I specifically reference
10:32:37 Brady material and the Oswego County Sheriff's Department
10:32:40 investigation report which contained the depositions,
10:32:44 statements of the police officers, yes, ma'am.

10:32:46 **Q.** Okay, but when you're trying to specify what
10:32:49 information may be Brady material, you're being very, very
10:32:54 detailed on that letter. Do you want me to go through the
10:32:57 letter with you?

10:32:58 **A.** You don't have to but you can if you want.

10:33:00 **Q.** Well, let's talk a little bit about that.

10:33:03 **A.** Why don't we. I apologize, ma'am.

10:33:15 **Q.** Do you need some water?

10:33:17 **A.** No, thank you. I apologize for the last remark.

10:33:23 **Q.** Paragraph four starts with, "The report we provided
10:33:28 you identifies a number of different forms of information
10:33:31 that came to the Sheriff's Department in the form of
10:33:35 potential leads. To the extent that you construe this
10:33:40 information to be so-called Brady material, you may wish to
10:33:43 consider that portion of the file that deals with the
10:33:47 following." Now in this paragraph, you were trying to show
10:33:51 the attorneys this is such a large file, here's what you
10:33:54 may want to look at. Would that be a fair statement?

10:33:56 **A.** I referenced that those items potentially could be
10:34:00 Brady material. Could be Brady material, yes.

10:34:04 **Q.** Okay, thereafter, in a single -- in single spaced

10:34:10 typewritten form, you go on in two and a half pages to list
10:34:17 hundreds of different items, is that correct?

10:34:21 **A.** I would -- I've saw it when I last testified, but I
10:34:25 recall that there was a listing at that paragraph of
10:34:29 different potential areas, yes, I do recall that.

10:34:32 **Q.** And part of those different potential areas, you
10:34:39 also list individual police reports by individual officers
10:34:46 of the Oswego County Sheriff's Department, is that correct?

10:34:48 **A.** I'd have to look at it.

10:34:50 **Q.** Certainly.

10:34:50 MR. MOODY: Objection, Judge. It doesn't --
10:34:52 it doesn't say individual police reports, it refers to
10:34:54 individual police officers.

10:34:56 MS. BIANCO: Okay, officers. I'll take that.
10:34:58 I'll reword the question. Individual officers.

10:35:00 THE COURT: Okay.

10:35:01 **Q.** I'm going to show you page five and ask you to look
10:35:05 at the bottom half of that document.

10:35:11 **A.** The bottom half?

10:35:13 **Q.** Yes, please.

10:35:32 **A.** I have.

10:35:33 **Q.** On this particular list that you're directing the
10:35:56 attorneys to -- to look at as possible Brady material --

10:36:00 **A.** Ma'am, I'm not directing them to. I'm not directing
10:36:03 them to. I'm merely identifying which -- that which may

10:36:07 be.

Q. Okay.

10:36:07 **A.** That's all I'm doing. Identifying chronologically
10:36:11 what may be.

10:36:11 **Q.** What may be Brady material.

10:36:13 **A.** May be, yes.

10:36:13 **Q.** Okay, and in that list, you have Oswego County
10:36:17 Sheriff's Department officers William Cromie, yes?

10:36:22 **A.** Ma'am, I'm assuming you're reading from the document
10:36:24 so I don't need -- if you are reading it accurately, then
10:36:27 it reflects what I wrote if you are reading it accurately.

10:36:30 **Q.** Okay, and you list the same officers on Defendant's
10:36:35 Exhibit 13 as you did in your -- your handwriting outlining
10:36:47 what was in the boxes, right?

10:36:49 THE COURT: Is that ZZZ?

10:36:53 MS. BIANCO: ZZ, yes.

10:36:54 THE WITNESS: I'm looking at ZZ.

10:36:56 **Q.** ZZ, right.

10:36:57 **A.** Thank you.

10:37:02 **Q.** And I believe it should be the last page.

10:37:04 **A.** Can I look at the other exhibit can I?

10:37:07 **Q.** Sure.

10:37:19 **A.** Thank you. Looking at thirteen, yes, I've looked at
10:37:50 the two, yes.

10:37:50 **Q.** Okay, and nowhere on your December twenty-first

10:37:55 letter do you use the individual names of Deputy M.J.
10:38:03 Anderson, Michael Montgomery and Deputy VanPatten?

10:38:08 **A.** They are not typed in there, no, they aren't.

10:38:10 **Q.** Okay.

10:38:26 THE COURT: Ms. Bianco, this witness has been
10:38:28 on the stand for about two hours. Do you want to take
10:38:30 a --

10:38:31 MS. BIANCO: We need a break, sure.

10:38:33 THE COURT: Let's take about ten minutes. Any
10:38:36 objection?

10:38:36 MR. OAKES: No.

10:38:36 THE COURT: We'll be back at ten of eleven.

10:38:39 (Whereupon, there was a recess.)

10:55:32 THE COURT: Do you want to bring Mr. Dodd back
10:55:35 in please.

(Whereupon, there was a pause in the
proceeding).

10:55:42 THE COURT: Mr. Dodd, consider yourself still
10:55:43 under oath, sir.

10:55:44 THE WITNESS: Yes, sir.

10:55:44 THE COURT: Thank you. Ms. Bianco.

10:55:47 MS. BIANCO: Thank you, Your Honor.

10:55:48 BY MS. BIANCO:

10:55:48 **Q.** Mr. Dodd, I want to direct your attention back to
10:55:51 the December eighth, 1994 hearing argument regarding the

10:55:57 confidential informant file in particular, okay? During
10:56:03 that argument on a Brady discussion, and if you need to see
10:56:08 the transcript I'll show it to you, Fahey raised a question
10:56:11 about a report that Walsh had been provided regarding the
10:56:15 subject of Heidi Allen being an informant, and if you need
10:56:19 to review the transcript I can show you, it's Exhibit 6 and
10:56:23 it's page thirty.

10:56:26 THE COURT: Page thirty?

10:56:28 MS. BIANCO: Page thirty, yes, on the bottom
10:56:35 please. You might want to just go on the -- to the
10:57:02 next page because I'll be following the question with
10:57:04 that.

10:57:04 THE WITNESS: Thank you.

(Whereupon, there was a pause in the
10:57:13 proceeding).

10:57:13 **A.** All right, I've looked at page thirty and
10:57:17 thirty-one.

10:57:17 **Q.** And Mr. Fahey stated that the report that Mr. Walsh
10:57:24 shared with me indicated that there was a file in existence
10:57:28 that was brought to the scene of the D & W but Mr. Walsh
10:57:31 had not been given that particular file. That's what I
10:57:35 asked -- that's what I would ask to be disclosed and you
10:57:40 responded it --

10:57:42 **A.** What page are you at, I'm sorry.

10:57:43 **Q.** Page thirty-two, I apologize. You responded, "It

10:57:53 appears oftentimes the first time I hear something is when
10:57:57 I read it in the paper." Do you remember that response?

10:58:02 **A.** Well, the record would speak for itself, miss. I
10:58:05 don't -- do I recall saying those words, no, but the record
10:58:09 speaks for itself.

10:58:09 **Q.** Well, let me ask you this. At that time, which was
10:58:16 the December eighth motion argument, did you not know of
10:58:24 the existence of Heidi Allen as an informant or a possible
10:58:29 informant?

10:58:30 MR. MOODY: I'm going to object to the
10:58:31 relevance of what his knowledge was at that point in
10:58:33 time. We're not here to determine what he knew when.
10:58:35 We're here to determine what he turned over.

10:58:38 THE COURT: Why's it relevant if he knew it on
10:58:40 December eighth or December thirty-first as long as it
10:58:43 was turned over?

10:58:43 MS. BIANCO: Well, Judge, he's saying he's
10:58:44 read every single document in the file from the get go,
10:58:47 and now, at a hearing, in front of another judge, he's
10:58:52 pretending, or excuse me, I apologize for that, he is
10:58:55 contending that it's the first time he's heard about
10:58:59 this by reading it in the newspaper, so what is or
10:59:02 isn't in the file and when it got there is certainly
10:59:06 relevant.

10:59:07 THE COURT: Mr. Moody?

10:59:08 MR. MOODY: I guess my response to that would be we're talking about whether he recollected that. He may have read that particular report and not recollected it at that time and therefore forgot it and realized that was the first time. What he knew isn't the issue. When he knew isn't the issue. I -- I think that the question is is whether it was turned over.

10:59:34 THE COURT: I'll allow that question. That's it. The issue is was it turned over. It's not when Mr. Dodd knew about it.

10:59:43 MS. BIANCO: Could we repeat the question, Judge. I don't want to ask it the wrong way.

10:59:46 THE COURT: Sure.

10:59:47 THE WITNESS: Thank you.

11:00:19 (Whereupon, the court reporter read back Ms. Bianco's last question).

11:00:20 MR. MOODY: Is that the question? I thought the question was whether he -- I think it is -- the objection -- because my objection was when he -- when he knew it. I thought she -- she had said the question was whether he had read that particular report. Maybe I misunderstood what question.

11:00:34 THE COURT: The question was when he knew it. The question was when he knew it. Did he know it on December eighth.

11:00:40 **A.** I can testify as best I can to reconstruct this on December nine, 1994. I reviewed the statements of investigator -- part of the report, police report Investigator Anderson, VanPatten, Montgomery, and I reviewed those documents on December nine, 1994. I can testify, I can recall that.

11:01:05 **Q.** Okay.

11:01:06 **A.** I --

11:01:07 **Q.** So in -- you -- you can recall reviewing the documents on December ninth, but did you have any knowledge on December eighth of the items contained in People's Exhibit B?

11:01:20 **A.** What's B?

11:01:21 **Q.** I understand there's a lot of files here. That's the one with the confidential informant card, the picture.

11:01:28 THE COURT: Do you have it?

11:01:29 MS. BIANCO: I might.

11:01:30 THE COURT: It's not up here.

11:01:31 THE WITNESS: Okay, I've got B in my hand.

11:01:33 THE COURT: Mr. Dodd has it.

11:01:35 **A.** B is a -- well, it's a clear plastic bag with an evidence sticker. I -- I don't have a clear recollection that I can testify to from today. I don't. It was part of oral argument within the context of a motion.

11:01:56 **Q.** So you don't know whether or not that People's

11:02:00 Exhibit B was in the file box that -- the file box in the -- that was in your office, the original file box, do you know if it was there at that time?

11:02:11 **A.** Things --

11:02:12 MR. MOODY: Judge, I think this has been asked and answered a number of times.

11:02:15 THE COURT: I'm not sure. He's talking about December eighth again?

11:02:18 MS. BIANCO: I'm talking about December eighth when he's saying that he didn't -- the first time he read about it, he knew about it, his comment that it was in the newspaper. I'm asking if he knew whether that document, Exhibit B, was in his file or not.

11:02:29 THE COURT: He already answered that. He said he doesn't have a clear recollection of when he gained knowledge of it.

11:02:37 **Q.** When was the, and I apologize, you might have answered this question, but in December of 1994, was the Sheriff's Department original file already in the District Attorney's Office, the Grand Jury room, at the time of that motion argument?

11:03:05 **A.** My best recollection is that it would have been because we were photocopying the discoverable property, and my best recollection is that the Sheriff's Department investigation report filed, whatever else was part of it

11:03:25 which could include physical evidence, comes in and goes
11:03:28 out at different stages. I was the prosecutor, they were
11:03:30 the investigators, but I believe it was housed if you will
11:03:35 in the DA's office on that date I believe.

11:03:39 **Q.** Was it moved to the DA's Office because of a breach
11:03:43 that happened at the Sheriff's Department?

11:03:46 **A.** Was what --

11:03:47 MR. MOODY: Objection, Judge. I don't -- I
11:03:50 don't think he has testified he knew anything about a
11:03:52 breach.

11:03:52 MS. BIANCO: I apologize. I'll ask him.

11:03:53 MR. MOODY: And B, I don't know how that is
11:03:55 relevant.

11:03:56 THE COURT: First ask him if he knows an
11:03:58 alleged breach.

11:03:59 **Q.** Did you know whether or not --

11:04:01 MS. BIANCO: I'm sorry, Judge, I didn't mean
11:04:02 to talk over you.

11:04:03 **Q.** Do you know whether or not there was a breach in
11:04:05 security at the Oswego County Sheriff's Department with
11:04:09 regards to this particular file, the Heidi Allen file, that
11:04:13 they had in possession before it got moved to your office,
11:04:16 do you know whether there was a breach in security?

11:04:18 **A.** Of the Oswego County Sheriff's Department
11:04:20 investigation file?

11:04:21 **Q.** The file, that file, somebody got in the file room. Did you know anything about that?

11:04:25 **A.** I have no idea what you're talking about.

11:04:27 **Q.** Okay, so you weren't familiar with any internal memo written by Investigator Whipple concerning the breach of security?

11:04:34 **A.** I have no idea what you're talking about.

11:04:35 MR. MOODY: Objection. He said he didn't know what he's talking about.

11:04:42 **Q.** Okay.

11:04:42 **A.** I can tell you why the file moved if you want to ask that.

11:04:45 **Q.** No. I want to know if you knew about the breach.

11:04:46 **A.** Thank you.

11:04:47 **Q.** Now, what was the District Attorney's Office, if you know, what was the fax number. I know you were there for twenty-six years. What was the fax number at the time?

11:05:04 THE COURT: Should ask more specific dates.

11:05:07 **A.** In 2000 -- 1994?

11:05:09 **Q.** Yes.

11:05:11 **A.** It would be on the letterhead, if you have the letterhead from that date. I want to say it's 349-3477 I want to say.

11:05:20 **Q.** Would it be 349-3212?

11:05:23 **A.** I stand corrected. That would be from December

11:05:26 of --

11:05:27 **Q.** I can show it to you. I'm sorry, I apologize, 11:05:31 that's a December -- that's a 2013 letter.

11:05:34 MR. MOODY: If you grab what I think is ten, 11:05:37 eleven or 11-A, I think it should have it right at the 11:05:43 top.

11:05:52 **Q.** Telephone number. 349-3200.

11:05:55 **A.** What's the fax number?

11:05:57 **Q.** Looks like they don't have a fax number on it.

11:06:01 **A.** It's on the top. It has to be.

11:06:02 **Q.** I can show you 11-A, have you take a look at it.

11:06:07 **A.** No, that doesn't refresh my memory. We didn't write 11:06:14 it on 11-A.

11:06:15 MR. MOODY: I have something that -- if I can 11:06:19 have one second.

11:06:19 THE COURT: Can we stipulate to what the fax 11:06:21 number was?

11:06:22 MR. MOODY: Yeah. I can stipulate it's 11:06:24 349-3212.

11:06:26 THE COURT: 349-3212 is the fax number.

11:06:29 THE WITNESS: Thank you.

11:06:30 **Q.** I'm going to show you Defendant's Exhibit 52 and 11:06:38 52-A. I've made an entire mess.

11:06:46 THE COURT: Yes, you have.

11:06:47 MS. BIANCO: I apologize.

11:06:53 THE COURT: It's all right. Amy can contend with that. Ms. Bianco, I'm going to hand you 52.

11:08:54 MS. BIANCO: Thank you, Judge. Is that your copy?

11:09:08 MS. PEEBLES: This is just a copy but we can --

11:09:10 THE COURT: Re-mark it.

11:09:11 MS. PEEBLES: It's a one-page statement.

11:09:14 THE COURT: Ms. Bianco, hand that to the steno and have it re-marked as 52-A please.

(Defendant's Exhibit No. 52-A was re-marked for identification).

11:09:19 THE COURT: Any objection to the People?

11:09:21 MR. MOODY: No. Can I just see it, make sure --

11:09:39 MS. BIANCO: Oh, certainly.

11:09:39 THE COURT: I don't think 52-A was ever moved in. Our evidence list doesn't show it was ever moved in.

11:09:45 MR. OAKES: Do you show 52 as having been received?

11:09:47 THE COURT: 52 was moved in on the fourteenth of January.

11:09:52 MS. BIANCO: This is 52.

11:09:54 THE COURT: What I'm saying is there's no

11:09:55 record with the Court that shows 52-A was ever moved in.

11:09:59 MS. PEEBLES: It was, but it was for the limited purpose of simply saying it was in the box.

11:10:04 MR. MOODY: I thought it was 52.

11:10:06 MS. PEEBLES: Both of them, 52 and 52-A, my recollection was that was what we did, and it was only offered for the purpose of establishing it was actually in the box.

11:10:16 THE COURT: Let's mark it another 52-A. Any objection to the 52-A?

11:10:22 MR. MOODY: No, Judge.

11:10:23 THE COURT: Ms. Bianco, 52-A?

11:10:26 MR. MOODY: For the purpose of that it was in the box.

11:10:30 THE COURT: Right. Ms. Bianco, that was just re-marked. So 52 and 52-A are in at this point prior to this line of questioning to only establish that those documents were in Michael Bohrer's file.

11:11:05 MS. PEEBLES: Exactly.

11:11:05 THE COURT: Not for the content of the actual letter or the material, correct?

11:11:09 MS. PEEBLES: Correct.

11:11:09 THE COURT: Okay.

11:11:11 MR. MOODY: Correct.

(Defendant's Exhibit 52-A was received in evidence).

11:11:15 THE COURT: Go ahead, Ms. Bianco.

11:11:18 **Q.** Showing you what's been marked as 52 and 52-A, 11:11:24 there's a number on the top of those documents, and it also 11:11:30 has Oswego County DWI Unit. Do you see that?

11:11:35 **A.** Just one second, miss.

(Whereupon, there was a pause in the 11:12:02 proceeding).

11:12:02 **A.** I looked at 52-A and 52. There -- what is the 11:12:06 question, I'm sorry.

11:12:07 **Q.** That those documents appear to be faxed from a 11:12:12 number that was from -- the fax number from the DA's 11:12:17 office, is that correct?

11:12:18 **A.** I have no idea.

11:12:19 **Q.** Well, the fax number on the top of that, can we 11:12:24 agree that was the DA's Office fax number?

11:12:26 **A.** 349-3202, and I'm drawing from memory here, yes, 11:12:30 that would have been a fax number associated with the 11:12:32 Oswego County District Attorney's office.

11:12:35 MR. MOODY: Zero-two or one-two?

11:12:37 MS. BIANCO: One-two.

11:12:37 THE WITNESS: I said 349-3212.

11:12:39 THE COURT: Yes. You just misspoke, that's 11:12:42 all right.

11:12:42 **Q.** That would have been from the District Attorney's Office, it would appear to be, based on the top where it would go through the fax machine, correct?

11:12:48 **A.** That would be the fax number that was available to the District Attorney's Office at that time, yes.

11:12:55 **Q.** Okay, could you explain how those faxed documents -- well, let me ask you this. During the course of discovery, did you fax documents to the attorneys?

11:13:09 MR. MOODY: Objection, Judge, to -- to -- during the course of discovery. I don't think we've established the date that this was faxed and whether that was during the course of discovery.

11:13:17 **Q.** What date does that appear to be faxed?

11:13:20 **A.** Well, I'm looking at 52-A, and on the top portion of it there appears a date May thirty-first, 1994. Doesn't -- and on the other one it appears to also be May thirty-first, 1994 at 4:20 p.m.

11:13:38 **Q.** Was it part of your procedure or protocol to fax documents to the attorneys at that time?

11:13:50 **A.** As part of discovery?

11:13:52 **Q.** Yes.

11:13:53 **A.** Okay, best recollection, miss, discovery went over by way of the documents that were photocopied and submitted or picked up. My best recollection is that as it relates to discovery, no. That discoverable property wasn't faxed.

11:14:20 That's my best recollection. However, I -- that's my best
11:14:25 recollection.

11:14:26 **Q.** So if those documents were faxed by -- from your
11:14:31 office at the time, it wouldn't have been you who faxed
11:14:35 them?

11:14:35 MR. MOODY: Objection, Judge. I don't think
11:14:36 he said that. That wasn't the question that was asked.

11:14:39 MS. BIANCO: Well, maybe I'll just be crystal
11:14:41 clear.

11:14:42 **Q.** Can you explain how those documents, 52 and 52-A,
11:14:46 with a fax number from the District Attorney's Office
11:14:49 somehow arrived in a box --

11:14:50 MR. MOODY: Objection "somehow arrived."

11:14:52 THE COURT: Yeah. Listen, we don't know if
11:14:53 these were faxed to Mr. Bohrer or to -- to allow him
11:14:57 to -- ask him to speculate where they were faxed to, I
11:15:00 don't think it's a fair question.

11:15:02 MS. BIANCO: I'll ask him specifically.

11:15:03 **Q.** Did you fax documents to Michael Bohrer, those two
11:15:08 documents, 52 and 52-A?

11:15:10 **A.** No. I will tell you -- I have to explain this.
11:15:13 This -- this shows a fax number. It doesn't indicate that
11:15:17 it was faxed to a particular number. Consistent with
11:15:21 facsimiles as I understand them that would have worked
11:15:23 then, there would be a "faxed from" number and a "faxed to"

11:15:26 number. It -- the documents 52-A and 52 do appear to have
11:15:32 the Oswego County DA's fax number. It doesn't indicate to
11:15:34 whom it was faxed. It does not.

11:15:37 **Q.** Okay. Now, directing your attention to the actual
11:15:46 trial of Gary Thibodeau, during the trial itself, did you
11:15:51 have the entire Oswego County Sheriff's Department file
11:15:58 with all the original documents with you during the trial
11:16:02 at the -- in the courtroom?

11:16:04 MR. MOODY: I'm going to object to relevance.
11:16:06 I think this is way beyond the scope of redirect.

11:16:09 MS. BIANCO: I'm going to get do that, Judge.
11:16:12 I can connect it up.

11:16:13 THE COURT: Quickly.

11:16:14 **A.** The entire file, absolutely not. Absolutely not.

11:16:17 **Q.** During your testimony with regards to Exhibit 11,
11:16:46 excuse me, 11-A, do you remember giving testimony that you
11:17:10 had sent a cover letter to Attorney Fahey, and I don't know
11:17:18 if Walsh is on there as well, on May sixteenth that
11:17:23 purported to attach the confidential informant documents
11:17:28 with it?

11:17:29 MR. MOODY: I'm going to object. It's beyond
11:17:30 the scope of redirect, Judge. I don't believe I
11:17:32 touched the subject at all.

11:17:33 THE COURT: He did not. No 11 or 11-A was
11:17:36 brought back on redirect so I'll sustain it.

11:17:39 MS. PEEBLES: Actually I don't think that's
11:17:41 correct. There's an exhibit you introduced, the date
11:17:46 stamp on it, and it might be up on the bench.

11:17:49 MS. BIANCO: I think I have it over here.

11:17:51 THE COURT: Who introduced? On redirect?

11:17:53 MS. PEEBLES: On redirect Mr. Moody introduced
11:17:55 it. It was a yellow sheet of paper with one date stamp
11:17:59 on it and he did on redirect, and correct me if I'm
11:18:01 wrong, but that was when he introduced that document.
11:18:04 We had never seen it before.

11:18:05 THE COURT: You mean ZZZ?

11:18:08 MS. BIANCO: No, it's another document. I
11:18:09 think it's up there.

11:18:10 THE COURT: That document?

11:18:11 MS. PEEBLES: No.

11:18:12 MS. BIANCO: Not that one. There was another
11:18:13 document.

11:18:14 MS. PEEBLES: It was a yellow sheet by itself.
11:18:20 Oh, here it is. This would be KKK.

11:18:22 THE COURT: Tie to KKK. Show Mr. Moody KKK.

11:18:30 MR. MOODY: This isn't part of KKK, this is
11:18:34 part of B. This is the report for B.

11:18:35 MS. PEEBLES: That's what was introduced.

11:18:37 MR. MOODY: It was in B when I introduced it
11:18:40 in B. This is --

11:18:40 MS. PEEBLES: Whatever number it is.

11:18:42 MR. MOODY: This is the original Kleist report that was attached to the evidence bag on B. It fell off at some point in the last month. That's B there. That was with B. I introduced -- excuse me. You said that I introduced this during the -- I never introduced this during this -- during redirect or -- or with this witness. I introduced this. I believe this was introduced on -- in their case when they introduced it, it was introduced through Fahey.

11:19:10 MS. PEEBLES: We never saw that document until yesterday on redirect.

11:19:14 MR. MOODY: That's absolutely not true.

11:19:17 MS. PEEBLES: That's absolutely the case. I've never seen that.

11:19:17 THE COURT: Hold on. KKK is a memo from Mr. Dodd received March twenty-fourth.

11:19:25 MS. PEEBLES: Thank you. That --

11:19:26 MR. MOODY: This is not KKK, that's what I'm saying. This -- if someone would bring -- this is the original carbon copy of the Kleist report that goes with 11 and 11-A.

11:19:38 MS. PEEBLES: We need to ask questions. We never saw that document until Wednesday.

11:19:41 MR. MOODY: It was attached to B.

11:19:43 THE WITNESS: Judge, could I --
11:19:44 THE COURT: No. Hold on a second.
11:19:45 THE WITNESS: I'm sorry. I had it in my hand.
11:19:47 I just --
11:19:50 THE COURT: If this was attached to B.
11:19:52 MR. MOODY: It fell off.
11:19:53 MS. PEEBLES: It might have fallen off. I've
11:19:55 never seen it before, Judge, before he was questioning
11:19:57 Mr. Dodd about it.
11:19:57 THE COURT: The staple has been removed. If
11:20:00 you never saw it, it was attached to B.
11:20:02 MS. PEEBLES: Never saw it. Never saw it.
11:20:03 MR. MOODY: You have seen it.
11:20:04 MS. PEEBLES: No because I just found
11:20:05 something on it yesterday. I never saw this document
11:20:07 before.
11:20:07 THE COURT: But it was attached to B. We
11:20:09 already moved B in so you had access to it.
11:20:11 MS. PEEBLES: This was not part of B. We
11:20:12 never saw it.
11:20:13 MR. MOODY: It was absolutely part of B.
11:20:15 MS. PEEBLES: Judge, what is the problem with
11:20:17 allowing her to make -- ask this witness questions
11:20:19 about this document? Is there a problem with that?
11:20:23 Why are you objecting?

11:20:24 MR. OAKES: Well, it's --

11:20:25 THE COURT: Because it's beyond the scope.

11:20:27 MR. OAKES: It's beyond the scope of redirect.
11:20:29 Mr. Dodd has been on the stand probably eight hours if
11:20:34 not plus at this point. We have rehashed issues three
11:20:36 or four times, and I have a clear recollection that
11:20:38 this was part of B, part of, it's been stapled to that,
11:20:43 they came detached to it. Again, this was introduced
11:20:46 early on, this was not part of redirect.

11:20:49 MS. PEEBLES: So it will be a problem for her
11:20:50 to ask him a couple questions regarding this document
11:20:53 for a reason? What reason?

11:20:55 MR. OAKES: Well, because the point that this
11:20:57 witness has been on the stand for eight hours, Ms.
11:21:00 Bianco has had plenty of opportunity to ask some
11:21:04 questions about this and -- ask some questions about
11:21:05 this issue, and we'd like to be able to move on with
11:21:09 this examination of this witness and other witnesses in
11:21:11 a timely fashion.

11:21:12 THE COURT: How many questions are you going
11:21:13 to ask?

11:21:14 MS. PEEBLES: Just a couple questions.

11:21:16 MR. MOODY: About what because this document
11:21:18 is --

11:21:19 THE COURT: Guys, we're -- we're pulling

11:21:20 documents around. I'm not going to be very happy if
11:21:24 you rip it.

11:21:24 MS. BIANCO: Can I state on the record my
11:21:25 offer of proof as to why we offer this document? There
11:21:28 are two -- there's a document here that purports to be
11:21:31 the same thing, and Mr. Dodd testified to this during
11:21:35 his redirect examination that this document was the
11:21:40 same as the document contained in whether it be eleven
11:21:43 or eleven --

11:21:44 THE COURT: 11-A.

11:21:45 MS. BIANCO: 11-A.

11:21:46 THE COURT: Before you go any further, do we
11:21:48 have an agreement that was attached to Exhibit B?

11:21:50 MS. PEEBLES: I've never seen the document. I
11:21:52 can't say so --

11:21:54 THE COURT: KKK is a memo. KKK is not a piece
11:21:59 of paper.

11:22:00 MS. PEEBLES: I never saw that document before
11:22:01 Wednesday.

11:22:02 THE COURT: Was it --

11:22:03 THE WITNESS: Judge, I have to correct
11:22:05 something. I -- it's not my place, it was witness
11:22:07 intervention. It was in the bag that was handed to me.
11:22:11 I took the yellow piece of paper out of the bag when I
11:22:14 was inspecting it. I just have to be correct on the

11:22:16 record.

11:22:17 MS. BIANCO: But he testified he looked at
11:22:18 this, and this was on redirect examination, he looked
11:22:21 at this document, he compared it with the document
11:22:25 contained in Defendant's Exhibit 11 and he stated that
11:22:30 it was the same thing.

11:22:31 THE COURT: That's going to be part of B.
11:22:34 That's what's in your right hand goes to B. Give it to
11:22:38 B, put it back in B.

11:22:40 MS. PEEBLES: Which is perfectly fine.

11:22:43 THE COURT: I understand that. Put it back in
11:22:46 B. Do you believe it was stapled? It probably --

11:22:48 MR. MOODY: I believe it was stapled to the
11:22:49 outside of B.

11:22:51 MR. OAKES: It was originally. I think it was
11:22:52 actually --

11:22:52 THE COURT: Do you have any objection to
11:22:53 putting it inside of B?

11:22:55 MS. PEEBLES: No objection.

11:22:55 THE COURT: That way we won't lose it.

11:22:57 MR. OAKES: And Your Honor, doesn't it perhaps
11:22:59 make sense to have a sticker put on that it's part of
11:23:02 B, B-1 or --

11:23:03 THE COURT: That's fine, some part of B. Do
11:23:05 you want to put B on there?

11:23:06 MS. BIANCO: Before it goes back in the bag I actually want to use it, so you can put it in the bag, but I'm going to take it out.

11:23:17 MR. OAKES: Can I just have it marked and then I'll give it to Ms. Bianco please.

11:23:20 THE COURT: That's fine. I'll allow the line of questioning. There seems to be some confusion when it came out of the bag. I don't know what harm comes from the questions.

11:23:33 MR. OAKES: Thank you, Your Honor.

11:23:35 THE COURT: So the People and defense agree that yellow piece of paper that Ms. Bianco you now have will be considered and will be part of B. Ms. Peebles?

11:23:47 MS. PEEBLES: No problem.

11:23:47 THE COURT: Ms. Bianco?

11:23:48 MS. BIANCO: No problem, Judge.

11:23:50 THE COURT: The People.

11:23:51 MR. OAKES: The People agree. Thank you, Your Honor.

11:24:27 (People's Exhibit B (yellow sheet) was marked for identification).

11:24:37 THE COURT: Before we go any further, do you have -- what exhibits do we have over here?

11:24:40 THE WITNESS: I have 11-A which is not stapled together. I have ZZZ.

11:24:45 THE COURT: Ms. Bianco, do you want to take some of these exhibits back? 11:24:47

11:24:49 MS. BIANCO: I need 11-A but the rest can go back. 11:24:52

11:24:52 THE WITNESS: I'm going to hand you back ZZZ.

11:24:54 MR. MOODY: Judge, and looking at -- at my notes -- 11:24:57

11:24:57 THE COURT: Don't take B away, that thing's part of B. 11:24:59

11:25:01 MS. BIANCO: I got B right here with B, right here, this was going to you. 11:25:03

11:25:04 THE COURT: That's fine. Bring it over right here. 11:25:06

11:25:07 MS. BIANCO: And there's 52 and 52-A are coming over as well. 11:25:10

11:25:11 THE WITNESS: Do you wish me, Judge, also to return the additional exhibits? 11:25:12

11:25:14 THE COURT: I prefer you to, yes.

11:25:15 THE WITNESS: Thank you.

11:25:16 THE COURT: Give to Ms. Bianco

11:25:18 THE WITNESS: Ms. Bianco, if I may, I'm going to hand you back 164, Defendant's YYY, People's Exhibit 6, defendant. 11:25:20 11:25:24

11:25:26 MS. BIANCO: Thank you.

11:25:26 THE WITNESS: I only have before me 11-A. If

11:25:29 you want me to have that one.

11:25:30 THE COURT: Just give him that part of B.

11:25:51 MR. MOODY: And Judge, in reviewing my notes, 11:25:53 apparently on my redirect on Wednesday part of it I did 11:25:55 ask him about the bag.

11:25:58 THE COURT: I'm going to allow it any ways.

11:26:00 MR. MOODY: I apparently did ask him about the 11:26:02 bag, I apologize.

11:26:07 THE COURT: Go ahead, Ms. Bianco.

11:26:09 MS. BIANCO: Thank you, Judge.

11:26:57 THE COURT: Are you ready, Ms. Bianco?

11:26:58 MS. BIANCO: Yes, Judge. I'm just making sure 11:27:00 I have all the documents that I need.

BY MS. BIANCO:

11:27:03 **Q.** When you testified as to Exhibit B, People's Exhibit 11:27:13 B, the Kleist report, do you remember giving testimony that 11:27:18 that was an exact copy of the report that was contained in 11:27:30 Exhibit 11?

11:27:34 **A.** Could I see 11 please?

11:27:36 **Q.** Certainly.

11:27:41 **A.** Thank you. Didn't testify it was an exact copy. I 11:27:47 testified that in part it was an exact reproduction, but 11:27:51 that there were additional items that appeared on Exhibit 11:27:58 11, specifically a date stamp of May sixteen, 1995, 11:28:03 District Attorney's Office, and also there was writing that

11:28:08 said re: OCSD evidence, R. Thibodeau, G. Thibodeau,
11:28:14 Investigator Kleist.

11:28:14 **Q.** And you remember giving testimony that you had
11:28:17 received the Kleist report first and sent it to the defense
11:28:24 before you brought it over to the Sheriff's Department to
11:28:26 be stamped in. Am I correct in that?

11:28:29 **A.** I'm trying to understand your question accurately.
11:28:32 I believe you're referencing that after the District
11:28:36 Attorney's Office received on May sixteen, 1995 and date
11:28:40 stamped it as received, Investigator Kleist report, that
11:28:46 best recollection subject to what the record says is that
11:28:48 the next day, May seventeenth, whatever the exhibit number
11:28:51 is, that I provided copies of that to attorneys Fahey and
11:28:54 Walsh, yes.

11:28:55 **Q.** And then you brought it over to the Sheriff's
11:28:58 Department, correct?

11:28:58 **A.** It being that which we had, the District Attorney's
11:29:02 Office had received, didn't bring it over, it would have
11:29:04 been in the same -- literally I put it into the inbox for
11:29:07 the purposes of it being received through Investigator
11:29:12 Whipple, yes.

11:29:12 **Q.** Okay, if -- I want you to take -- to compare the
11:29:16 date stamp for the Sheriff's Department on both of those
11:29:21 documents. Could you take a look at Exhibit B --

11:29:24 THE COURT: Do you mean that portion B?

MS. BIANCO: That portion B.

11:29:26 THE COURT: B and 11.

11:29:28 **Q.** B and 11, right, there's a stamp on the bottom that 11:29:32 says Oswego County Sheriff's Department.

11:29:35 **A.** Yes.

11:29:36 **Q.** Okay, they're not in the same places are they, 11:29:39 they're in different locations on that document aren't 11:29:42 they?

11:29:42 **A.** Do you want the explanation?

11:29:44 **Q.** I'm asking you if they're in different locations.

11:29:46 **A.** They're in -- no, they're not in different 11:29:49 locations, but you're correct, the -- on the yellow piece 11:29:53 of paper which is B, the date stamp which is Oswego County 11:29:57 Sheriff's Department received May twenty-third, 1995 is 11:30:01 towards the bottom aspect of the yellow piece of paper, and 11:30:04 on Exhibit No. 11, that same document, there's a received 11:30:10 date of May twenty-third, 1995, again, in the general same 11:30:14 area, but you're correct, they're not in the identical 11:30:16 location, that's correct.

11:30:18 **Q.** Okay, so they're stamping documents multiple times 11:30:24 in different spots and that's part of the original file?

11:30:28 **A.** To completely answer the question, the yellow piece 11:30:34 of paper would have been part of an evidence submission so 11:30:37 that when it was submitted as evidence with the Sheriff's 11:30:41 Department, it received a date stamp. That's Exhibit B.

11:30:45 Exhibit No. 12, or correction, eleven.

11:30:49 THE COURT: Eleven.

11:30:49 **A.** Would have been the document that was sent to the
11:30:52 Oswego County Sheriff's Department from the District
11:30:56 Attorney's Office. It also received a date stamp. They
11:31:00 were submitted to Investigator Whipple apparently on the
11:31:04 same date, one by Investigator Kleist and one would have
11:31:09 been through the District Attorney's Office.

11:31:11 **Q.** So when he put that evidence, that -- that yellow
11:31:15 sheet is an evidence tag of some sort?

11:31:17 **A.** No, it's not an evidence tag, it's a supplemental
11:31:20 report that the officer who was putting evidence into a bag
11:31:26 would have either stapled it to the outside of the bag or
11:31:28 put inside of the bag as part of the evidence submission,
11:31:31 and a copy of it was apparently then given to investigator,
11:31:35 or correction, to Investigator Whipple by Investigator
11:31:38 Kleist, yes.

11:31:39 **Q.** I want you to look at the evidence login sheet on
11:31:44 Defendant's Exhibit 11 please, the very bottom notation
11:31:50 where Investigator Whipple is logging the evidence in. Do
11:31:54 you see that?

11:31:55 **A.** You're talking about Exhibit 11? I'm sorry.

11:31:59 **Q.** That's okay. I'm probably confusing you.

11:32:04 **A.** Okay, page one of Exhibit No. 11.

11:32:07 **Q.** Yes. Do you see that?

11:32:10 **A.** One second.

11:32:13 (Whereupon, there was a pause in the proceeding.)

11:32:15 **A.** Yes.

11:32:16 **Q.** Okay, and the date is May twenty-third, correct?

11:32:19 **A.** 1995 by Investigator Whipple, yes.

11:32:23 **Q.** And it was put back on an evidence shelf, isn't that what it says?

11:32:28 **A.** The item that was submitted, the plastic bag that you hold in your hand, if it's the same number, that particular plastic bag then would have been taken by Terry Whipple who was also the evidence custodian, he would have been the person who put it into secure evidence. This document Exhibit No. 11 merely reflects what it is that he did with the physical evidence item that you hold in your hand.

11:32:52 **Q.** So would you agree that the physical evidence of the evidence contained in People's Exhibit B was logged in on an evidence shelf on May twenty-third, 1995?

11:33:08 **A.** I can tell you that the page one of Exhibit No. 11 reflects what it is that Terry Whipple typed, ma'am. I can testify as to what. I can read the document but it's what he typed.

11:33:25 **Q.** Okay, and --

11:33:26 **A.** I didn't -- I didn't do this. This is what

11:33:28 Investigator Whipple did, ma'am.

11:33:30 **Q.** And Gary Thibodeau's trial started on May
11:33:33 twenty-second?

11:33:33 **A.** Best recollection is jury selection started about
11:33:36 May twenty-second, 1995, best recollection.

11:33:39 **Q.** And this particular piece of People's Exhibit B was
11:33:44 not with you during the course of the trial, it was not in
11:33:48 your evidence box.

11:33:50 THE COURT: Hold it before you use that. Are
11:33:51 you talking about the entire B or yellow B?

11:33:54 **Q.** The entire B.

11:33:59 **A.** I know that for the purposes of the jury trial
11:34:03 involving Gary Thibodeau, that there were items of physical
11:34:06 evidence that I would have requested to be taken out of
11:34:09 secure evidence from the Sheriff's Department through
11:34:11 Investigator Whipple to be given to me for the purposes of
11:34:15 having it with me to introduce. I -- I do not have a clear
11:34:21 recollection, although I didn't introduce that so I can say
11:34:25 that no, it in all probability, ninety-nine point nine nine
11:34:29 nine percent, it would not have been in my physical
11:34:32 possession during the course of the jury trial because it
11:34:36 was not an item that I would seek to introduce into
11:34:39 evidence.

11:34:40 **Q.** And you would agree that if it was taken out of the
11:34:44 evidence shelf, it would have been -- there would have been

11:34:47 a log note that said it was taken out and then put back,
11:34:50 right?

11:34:51 THE COURT: Hold it. Where are you going with
11:34:52 this? He said he sent it over on the seventeenth of
11:34:55 May.

11:34:55 MS. BIANCO: Well, Judge --

11:34:56 THE COURT: Why would you expect -- why would
11:34:58 he have to introduce this? I'm trying to figure out
11:35:00 where we're going.

11:35:02 MS. BIANCO: Judge, he -- he said he sent it
11:35:03 over on the seventeenth.

11:35:05 THE COURT: Right.

11:35:06 MS. BIANCO: Of May. He said he sent it over
11:35:09 on June the fifth as well, that's this yellow document
11:35:12 SS.

11:35:13 THE COURT: Okay.

11:35:14 MS. BIANCO: That's in the pile of the SS
11:35:17 things, and I believe if you look at the testimony,
11:35:20 particularly it was my testimony, during the course of
11:35:25 my review of Attorney Walsh's file, the only piece of
11:35:30 evidence that he had regarding this was stamped with
11:35:34 the May twenty -- with the Sheriff's Department stamp
11:35:37 and the district attorney's May sixteenth stamp so it
11:35:40 couldn't have been given on the sixteenth because he
11:35:43 has a different document, he has a document that's

11:35:46 dated with the twenty-third on it and that was
11:35:48 introduced. In other words, it wasn't sent down on the
11:35:51 sixteenth, it couldn't have been because --

11:35:53 THE COURT: He said the seventeenth first of
11:35:55 all.

MS. BIANCO: The seventeenth because how could
there be the stamp.

11:35:55 THE COURT: You said Mr. Walsh's file. You
11:35:58 mean Mr. Fahey's file.

11:36:00 MS. BIANCO: No, Mr. Walsh's file. That's how
11:36:02 we discovered this document which Fahey never had.

11:36:04 THE COURT: That's your position he's never
11:36:06 had.

11:36:06 MS. BIANCO: Right, and the testimony was --

11:36:07 THE COURT: Mr. Moody, do you wish to be
11:36:09 heard?

11:36:09 MR. MOODY: Judge, I think the problem we're
11:36:11 getting into is that it -- what they're talking about
11:36:15 two different documents as being the same. It appears
11:36:17 that -- that according to what I understand DA Dodd's
11:36:22 testimony to be, on the seventeenth he received a
11:36:25 document. He made copies of what was there. And
11:36:28 stamped it. He then returned the original to the
11:36:32 original documents that he had to Investigator Kleist
11:36:34 or whoever brought them up and then they were then

11:36:37 brought to the Sheriff's Department so they would be
11:36:40 two separate documents, the one stamped the sixteenth
11:36:43 and then went on -- and then the one logged in the
11:36:46 twenty-third which the copy there that is -- that is
11:36:53 with -- and he apparently what he said is they gave
11:36:57 that copy or made a copy that was stamped and gave that
11:37:01 copy to Kleist as well and that was logged in or put in
11:37:06 the file as well. I think what we have are there's --
11:37:10 and there are clearly two separate documents. We have
11:37:12 two separate documents with two different dates on
11:37:14 them.

11:37:14 MS. PEEBLES: Judge, can I be heard on this
11:37:16 just to clear some stuff up because I think there is
11:37:18 some confusion with the Court and I want to make sure
11:37:20 you understand where we're going with this.

11:37:22 THE COURT: Yeah. I'd like to know where
11:37:23 you're going with this.

11:37:24 MS. PEEBLES: Yeah, okay. First and foremost
11:37:25 as Ms. Bianco stated, the reason we discovered this is
11:37:28 because we went through Attorney Walsh's file and we
11:37:31 saw the Kleist document and it had -- the only Kleist
11:37:34 document we had was the May twenty-second, May
11:37:37 sixteenth date stamp and the May twenty-third date
11:37:40 stamp so obviously Mr. Walsh had to get that document
11:37:43 sometime after May twenty-third, okay, so hear me out.

11:37:45 The bottom --

11:37:45 THE COURT: Why's it the logical conclusion?

11:37:48 MS. PEEBLES: How could he get a document
11:37:50 before May twenty-third?

11:37:51 THE COURT: He could have sent them twice.

11:37:52 MS. BIANCO: It was the stamp, the stamp on it
11:37:54 says May twenty-third.

11:37:55 MS. PEEBLES: The stamp says May twenty-third.
11:37:57 The Sheriff's Department stamp, you have the documents,
11:38:00 there's two stamps, May sixteenth, May twenty-third.

THE COURT: Okay.

11:38:02 MS. PEEBLES: He has to have received it after
11:38:03 May twenty-third, no question about it, so in an effort
11:38:06 to establish how Mr. Walsh would have possibly gotten a
11:38:08 document that's date stamped May twenty-third on May
11:38:12 seventeenth, they're trying to argue oh, by the way, we
11:38:14 plopped it on his desk on June fifth after they rested.
11:38:17 That's how he got the document that's date stamped May
11:38:20 twenty-third.

11:38:20 THE COURT: There's no jury. We don't need to
11:38:23 be all -- what's your argument?

11:38:24 MR. MOODY: My argument is that he received
11:38:27 what I believe --

11:38:27 THE COURT: He being who, Walsh?

11:38:31 MR. MOODY: Fahey or Walsh, that on May

11:38:34 seventeenth the -- and I believe it's 11 or 11-A.
11:38:36 THE COURT: 11.
11:38:36 MR. MOODY: The letter that was sent that
11:38:38 those documents, the Kleist report that has the date
11:38:42 stamped just on the DA's Office on the sixteenth.
11:38:45 THE COURT: Right.
11:38:45 MR. MOODY: And the attached documents with
11:38:47 that, were sent on May seventeenth. They then were
11:38:50 re-sent because the Sheriff's Department received the
11:38:54 Kleist report which according to the copies that you
11:38:57 can read was written on May sixteenth, and they
11:39:03 received that report that -- that then they re-sent
11:39:08 that document after they stamped it in and after Terry
11:39:12 Whipple writes his -- the notes that he wrote on it
11:39:14 back to the DA's Office and that -- and they also made
11:39:16 a photocopy of the evidence tag that was on that, and
11:39:21 that was re-sent out on June fifth, so in other words,
11:39:27 they're two separate documents, and that's why they're
11:39:29 in two separate date stamps. I think --
11:39:32 MS. PEEBLES: I guess it's going to be a
11:39:34 matter of the Court to sort through, but it makes
11:39:37 absolutely ridiculous sense what he just said about how
11:39:40 they came into possession of those documents. It makes
11:39:42 no sense.
11:39:43 THE COURT: Ms. Bianco.

11:39:46 MS. BIANCO: Yes, Judge.

11:39:47 THE COURT: Continue the line of questioning
11:39:49 but you seem to be -- get to the point please of where
11:39:52 you're going with this.

11:39:57 MS. BIANCO: Judge, I think I'm going to move
11:39:59 on to another topic.

11:40:00 THE COURT: Okay.

11:40:05 **Q.** I guess my only -- I want to make sure I clarify
11:40:10 that Exhibit B, the actual physical exhibit, was not in
11:40:16 your possession during the course of Gary Thibodeau's trial
11:40:20 in the courtroom, that's I guess what I'm trying to --

11:40:23 **A.** Ms. Bianco, my -- my best recollection is that it
11:40:32 probably was not.

11:40:34 **Q.** Because you had no intention of introducing that
11:40:37 document, would that be fair?

11:40:38 MR. MOODY: That's been asked and answered a
11:40:40 couple times.

11:40:42 THE COURT: Sustained.

11:40:42 **A.** Best recollection, yes.

11:40:42 THE COURT: That's all right. It's sustained.

11:40:44 **Q.** Oh, I do have an additional question. Were you
11:40:53 aware of a lead that came in immediately after Gary
11:41:01 Thibodeau's trial and prior to Richard Thibodeau's trial
11:41:06 concerning a writing on --

11:41:09 THE COURT: I'm sorry, I didn't hear you.

11:41:11 **Q.** Concerning a -- were you aware of a lead that came
11:41:14 in, and I think it's Exhibit 140.

11:42:06 THE COURT: Do you have another 140?

11:42:08 MS. PEEBLES: Yes.

11:42:09 MR. MOODY: Judge, if what we are talking
11:42:11 about is lead of the Junius Pond, I believe that's on
11:42:16 Junius Pond bathroom, this is well beyond the scope of
11:42:20 anything in redirect.

11:42:21 THE COURT: Sustained.

11:42:21 MS. PEEBLES: Actually it's not. There is a
11:42:23 reference to Junius Pond on the --

11:42:25 THE COURT: Direct.

11:42:26 MS. PEEBLES: The notepad that was introduced
11:42:28 into evidence by the prosecution.

11:42:29 THE COURT: What note pad, ZZZ?

11:42:31 MS. PEEBLES: I think it was ZZZ.

11:42:34 THE COURT: Okay.

11:42:36 MR. MOODY: But no questions were asked about
11:42:38 that lead. I'm not sure --

11:42:39 THE COURT: You're not saying you opened the
11:42:42 door when you introduced the bag? I'll allow the
11:42:45 question.

11:42:45 **Q.** And your Exhibit ZZZ had some reference to --

11:42:49 **A.** Ma'am, I'm having trouble hearing, I'm sorry.

11:42:51 **Q.** I'm sorry, I'm losing my voice at this point. I can

11:42:54 put the mike on.

11:42:54 THE COURT: Yeah.

11:43:55 **Q.** Showing you ZZZ.

11:43:59 **A.** And while you're here, ma'am, I'm going to return to
11:44:02 you B and 11.

11:44:03 **Q.** Thank you.

11:44:05 **A.** I'm taking ZZZ.

11:44:08 MS. BIANCO: And I'm going to put B back.

11:44:11 THE COURT: Please do.

11:44:30 **Q.** Do you see where it says the Junius Pond?

11:44:33 **A.** I had written down NYST Junius Pond which is a
11:44:40 substation but was -- reflects there was a file that had
11:44:44 that on it, NYSP Junius Pond.

11:44:48 **Q.** Was that referencing a lead that came in that
11:44:54 stated --

11:44:56 MR. MOODY: Judge, I'm going to object because
11:44:57 if now -- unless we're going to contend that the Junius
11:45:00 Pond New York State Police Station is in the bathroom
11:45:04 of the Junius Pond travel stop --

11:45:06 THE COURT: Well, I think the question --.

11:45:08 MR. MOODY: I don't think I opened the door.

11:45:10 THE COURT: I think the question is maybe have
11:45:11 him explain what he means because if it's just
11:45:13 reference to the substation, it's not -- you cannot
11:45:16 bring in the other evidence.

11:45:17 MS. BIANCO: This references the substation as
11:45:19 well. This is one of the documents --

11:45:21 THE COURT: Okay.

11:45:21 MS. BIANCO: -- that he's referencing.

11:45:22 THE COURT: If you can tie it in, tie it in.
11:45:25 Tie it in, see if you can tie it in.

11:45:27 **Q.** Okay, do you recall a lead coming in to the State
11:45:33 Police that someone had written on the bathroom stall wall
11:45:36 at the thruway stop of Junius Pond "Heidi Allen is a
11:45:40 snitch." Do you remember that lead?

11:45:41 **A.** No, ma'am. I'm going to have to look at what you
11:45:43 have.

11:45:44 **Q.** Certainly.

11:45:44 **A.** You're asking me to remember a -- what lead number
11:45:48 was it please?

11:45:48 **Q.** One-forty.

11:45:49 **A.** Out of fifteen-hundred. You're asking me to
11:45:51 remember that one.

11:45:52 THE COURT: The question I have for you, Ms.
11:45:53 Bianco, is his ZZZ notation simply makes reference to
11:45:58 the Junius Pond substation, not making reference to a
11:46:01 June fifth report.

11:46:02 MS. BIANCO: Well, the question is that
11:46:03 document I think he's already testified was a
11:46:06 continuing work in progress. That Junius substation

11:46:09 thing is referencing that particular document. That's our contention where they're talking about the snitch part.

11:46:17 THE WITNESS: Do you want me to answer the question?

11:46:18 THE COURT: Let her ask the question first. Ask that question.

11:46:22 **Q.** Do you remember that lead coming in?

11:46:25 **A.** Lead --

11:46:27 **Q.** One-forty.

11:46:28 **A.** Well, it's marked as an exhibit, it's marked as an Exhibit 140.

11:46:32 **Q.** Excuse me. 140, there is no lead number on it. I don't believe there is.

11:46:35 **A.** Well there's a lead that says four-one-six.

11:46:38 **Q.** Okay.

11:46:38 **A.** Bear with me. I'm looking at it. It appears to have a lead number of four-one-six from a Tim J. Lawton.

11:46:52 **Q.** Do you remember receiving or looking, reviewing that lead at any time, do you remember that?

11:46:58 **A.** If this was received and is one of the leads or was a document, at some point I would have looked at it, yes, ma'am. Do I have a clear recollection today as I testify that I looked at this? I would have looked at it but I don't have a clear recollection as I testify today.

11:47:23 MR. MOODY: It appears that the copy of that lead has the number cut off either because the way it was photocopied or whatever because -- and I've seen the original. The actual lead number is one-four-one-six. And I'll show you.

11:47:38 THE COURT: It makes sense if it's a June lead.

11:47:42 MS. BIANCO: That's fine, that's what they provided us so that's what we have.

11:47:45 THE COURT: Okay.

11:47:45 MR. MOODY: Just show you this, the page from that.

11:47:53 **Q.** Do you know if that was ever provided to attorney -- do you know if that was ever provided to Attorney Fahey, that particular lead about Heidi Allen being a snitch written on the bathroom wall?

11:48:03 **A.** Lead one-four-one-six?

11:48:05 **Q.** Yes.

11:48:06 **A.** Hold on. In looking at ZZZ --

11:48:22 MR. MOODY: Judge, can -- can -- how is that relevant? I'm still getting confused. How is it relevant and how is it not beyond the scope of the direct?

11:48:31 THE COURT: Well, when -- when did the witness make the notation in ZZZ about the Junius Pond State

11:48:38 Troopers barracks? Can you tell us?

11:48:40 THE WITNESS: Yes. It would have been prior
11:48:44 to December fourteen, 1994, and in looking --

11:48:49 THE COURT: That don't tie together.

11:48:51 THE WITNESS: And other dates it would have
11:48:53 been 12/5, 1994 because I see dates that appear on this
11:48:57 ZZZ and I know the discovery went over on 12/14, 1994.
11:49:02 The Exhibit 140 handed to me has an entry date of 9/23,
11:49:06 1995.

11:49:09 MS. BIANCO: Judge, I thought we established
11:49:10 that when he testified that this was a continuing work
11:49:11 in progress.

11:49:12 THE COURT: What he testified to is he could
11:49:14 not give you a specific date when he stopped compiling
11:49:17 ZZZ.

MS. BIANCO: Right.

11:49:17 THE COURT: He said sometime between December
11:49:19 fifth and the fourteenth of December, 1994 because Z
11:49:25 relates specifically to those five boxes.

11:49:28 MS. BIANCO: Judge, when I questioned him with
11:49:30 all due respect, exhibit -- excuse me.

11:49:33 THE COURT: ZZZ.

11:49:35 MS. BIANCO: Lead fourteen-hundred was written
11:49:36 in April of ninety-five, and I asked him specifically
11:49:39 why would that be referenced lead fourteen-hundred.

11:49:41 THE COURT: Because he explained at that point
11:49:44 there seemed to be some confusion regarding the
11:49:46 difference between the lead number and a lead sheet
11:49:48 which he explained, but he -- he testified, I'm not
11:49:51 sure if it was to you or Mr. Moody, that this ZZZ was
11:49:56 compiled for the purpose of keeping track of what was
11:50:00 going into those five boxes, one to Fahey, one to Walsh
11:50:03 and one to the Court. I'm not sure which attorney
11:50:05 asked him what was the specific dates. He said he
11:50:08 could not give you a specific date, it was over a time
11:50:11 frame, and actually I think you pushed him for a
11:50:13 specific date, he said the last date would have been
11:50:14 let's say December fourteenth, 2000, I'm sorry,
11:50:18 December fourteenth, 1994.

11:50:19 **Q.** So that there was no -- so I'm clear, you did not
11:50:24 add any information to those notes after December
11:50:28 fourteenth, 1994, there's no more information added to your
11:50:35 notes.

11:50:35 THE COURT: Again, is this ZZZ?

11:50:37 MS. BIANCO: ZZZ, yes, sorry.

11:50:38 THE COURT: Okay, thank you.

11:50:39 MS. BIANCO: I think we're all confused at
11:50:41 this point.

11:50:41 THE COURT: I understand.

11:50:44 **A.** I can testify certainly that ZZZ was used and

11:50:54 created by me to insure what was in the file, what was
11:50:57 photocopied and reproduced. That thereafter, as additional
11:51:02 discovery came in, that additional discovery, after the
11:51:07 12/14 submission and other dates, that would have been
11:51:12 affixed to a file letter, and the documents that were part
11:51:16 of it would have been file copies, DA's Office, would have
11:51:20 been rubber banded or stapled or paper clipped together as
11:51:23 part of that. I don't have a clear recollection as to
11:51:27 whether or not I wrote anything on this after December or
11:51:33 prior or after December fourteen, 1994. I don't have a
11:51:37 clear recollection if I wrote something additional on it
11:51:40 afterwards.

11:51:42 **Q.** Okay, so the Junius Pond entry, do you have a clear
11:51:47 recollection when you wrote that entry?

11:51:50 **A.** Yes. The --

11:51:52 THE COURT: ZZZ.

11:51:53 MS. BIANCO: ZZZ, yes.

11:51:54 **A.** Junius Pond, the entry that I wrote Junius Pond,
11:52:00 would be because there was a file in the Sheriff's
11:52:03 Department overall investigation report that had a sub-file
11:52:07 created that had Julius Pond and I wrote down the names of
11:52:11 those files. That would have been created by writing by me
11:52:17 immediately prior to twelve -- 12/5, 1994 through 12/14,
11:52:22 1994.

11:52:23 **Q.** So you're stating with certainty that that lead, the

11:52:27 lead I gave you regarding Junius Pond, was not in the sub-file at the time you wrote that?

11:52:32 **A.** No, no.

11:52:33 **Q.** That document ZZZ.

11:52:35 **A.** I'm not saying that at all.

11:52:36 **Q.** The Junius Pond.

11:52:37 THE COURT: Correct.

11:52:37 **A.** I'm not saying that, miss, I'm saying this document ZZZ when I wrote on it and put in blocks different things, it was reflective of a sub-file within the entire file.

11:52:53 **Q.** And you don't know when the last sub-file, when the last writing was about the sub-file, is that fair?

11:52:58 **A.** This includes also that there were leads. The sub-files didn't mean that a lead number or lead sheet was within a sub-file. There was a large quantity of material. I see here that lead numbers were written down by me. I guess that's the best answer I can give you, miss.

11:53:24 **Q.** You do agree that the lead fourteen-hundred is in ZZZ, correct?

11:53:33 **A.** I can find it. Just bear with me. I can see I wrote down a number of numbers, twelve-oh-one through fourteen-hundred, and at a different location, twelve-fifty-one through fifteen-hundred.

11:54:04 **Q.** So lead fourteen-hundred is in your writing, correct?

11:54:09 THE COURT: This line's been pursued.

11:54:11 MS. BIANCO: I'm just trying to establish whether or not that particular lead --

11:54:14 MR. MOODY: Object to what she's trying to establish. The objection is that it's been asked and answered.

11:54:18 MS. BIANCO: He never answered whether he gave it to Judge Fahey or not, that's all I want to know, that's the last question.

11:54:23 THE COURT: Gave what to Judge Fahey?

11:54:25 MS. BIANCO: That particular lead.

11:54:26 MR. MOODY: Well, how's that --

11:54:27 THE COURT: What particular lead, fourteen-hundred or fourteen-sixteen?

11:54:31 MS. BIANCO: Fourteen-sixteen.

11:54:32 THE COURT: Based on this witness's testimony, it's beyond the scope of redirect.

11:54:36 MS. BIANCO: Well, that -- Judge, with all due respect, that's why I was asking about the Junius Pond notation.

11:54:41 THE COURT: And he said to the best of his recollection that ended December fourteenth, 2000 -- 2000, excuse me, 1994.

11:54:49 MS. BIANCO: But it's referenced lead number fourteen-hundred which was created in April so it

11:54:53 couldn't possibly be.
11:54:54 THE COURT: But he distinguished between a
11:54:55 lead and a lead sheet.
11:54:57 MS. BIANCO: Okay, then I have no further
11:55:00 questions.
11:55:00 THE COURT: Thank you. Don't leave with my
11:55:01 evidence please.
11:55:01 MS. BIANCO: I'm going to put that back with
11:55:03 all the other exhibits.
11:55:04 THE COURT: Okay, thank you. It is now five
11:55:06 of twelve. Why don't we take a break until five after
11:55:10 one. Does that give everybody enough time?
11:55:14 MR. OAKES: Yes, Your Honor.
11:55:20 (Whereupon, there was a recess.)
12:57:03 THE COURT: Mr. Dodd, you're still under oath,
01:01:09 sir.
01:01:09 THE WITNESS: Yes, sir.
01:01:12 THE COURT: Mr. Moody.
01:01:13 MR. MOODY: Judge, before I go, I apologize
01:01:15 for my earlier outburst this morning. I apologize for
01:01:19 that in the middle of court.
01:01:20 THE COURT: Okay, apology accepted.
01:01:22 MR. MOODY: Thank you.

REDIRECT EXAMINATION

01:01:24 BY MR. MOODY:

01:01:25 **Q.** Mr. Dodd, do you remember you were asked some questions about police officers' names that were -- that showed up in Exhibit ZZZ which is the pad here.

01:01:44 **A.** Yes, sir, I was asked questions.

01:01:46 **Q.** And if you turn to the last page, the questions you were asked, were all those, all of the police officers that you listed there that were involved in the investigation of Heidi Allen?

01:01:57 **A.** Oh, absolutely not, no, no, no, no.

01:02:01 **Q.** Do you recognize the name Deputy Richard Curtis?

01:02:05 **A.** Yes.

01:02:06 **Q.** And what was his relation to the Heidi Allen investigation?

01:02:10 **A.** First responding road patrol deputy responded to the D & W Convenience Store on April third, 1994 regarding the abduction of Heidi.

01:02:18 **Q.** Did Deputy Curtis do a police report?

01:02:22 **A.** Absolutely yes.

01:02:22 **Q.** Is Deputy Curtis's name listed in those lists of names at the end of Exhibit Z?

01:02:27 **A.** No, it's not.

01:02:29 **Q.** ZZZ. Would his report have been included in the file or sub-file labeled police reports?

01:02:41 MS. PEEBLES: Judge, objection. Leading. Leading the witness all over.

01:02:45 THE COURT: I'll sustain it.
01:02:48 **Q.** Where would Deputy Curtis's report have been
01:02:51 included in that, in that document and in the -- the
01:02:59 Exhibit ZZZ?
01:03:01 MS. PEEBLES: Objection. Beyond the scope.
01:03:04 THE COURT: Beyond the scope of what, cross?
01:03:08 MS. PEEBLES: Recross. This is the third
01:03:10 redirect or the second redirect and it's beyond the
01:03:12 scope and it's leading.
01:03:13 THE COURT: Well, I don't think it's leading.
01:03:15 MS. PEEBLES: Curtis was never mentioned.
01:03:17 MR. MOODY: I think my point was that --
01:03:19 THE COURT: You brought the idea of police
01:03:20 officers. It's absolutely allowed.
01:03:23 **Q.** Where would his report have been for lack of a
01:03:26 better term referenced or included in that -- in that ZZZ?
01:03:30 **A.** Police reports.
01:03:31 **Q.** I'm going to show you Defendant's Exhibit 5 and ask
01:03:39 you if you recognize that.
01:03:43 **A.** Yes. I recognize this Exhibit No. 5, sir.
01:04:18 **Q.** And what is Exhibit 5?
01:04:19 **A.** Exhibit No. 5 would be the Oswego County Sheriff's
01:04:25 Department investigation report, but the typed report
01:04:28 relative to the abduction of Heidi Allen on April third,
01:04:31 1994 and various entries by police officers who

01:04:35 participated in the initial investigation by name and
01:04:40 statement as to generally what they did.

01:04:41 **Q.** And is Deputy Curtis's report in that Exhibit 5?

01:04:47 **A.** It is, yes, sir, it is.

01:04:49 **Q.** Are there any other police officers listed in that
01:04:53 police report?

01:04:53 **A.** Sergeant Burdicks (ph) is listed, Sergeant Lortie's
01:05:01 report is listed. I see --

01:05:04 **Q.** Then turning --

01:05:05 **A.** Just --

01:05:06 **Q.** Okay, sorry I --

01:05:20 **A.** Those three I see here.

01:05:22 **Q.** I'm showing you again Exhibit ZZZ, if you could turn
01:05:26 to the last page of Exhibit ZZZ, are either Sergeant
01:05:31 Burdick or Sergeant Lortie listed?

01:05:33 MS. PEEBLES: Again, Judge, he's leading the
01:05:35 witness.

01:05:36 THE COURT: Ask a non-leading manner.

01:05:41 **Q.** Do you see -- do you see either of those names in
01:05:48 the report?

01:05:48 **A.** No. They are not written by me, no, sir.

01:05:51 **Q.** Now, turning now to Exhibit 52, you were asked some
01:06:01 questions about a fax number that's at the top of that
01:06:05 document. Is that -- do you remember those questions?

01:06:07 **A.** Yes.

01:06:07 **Q.** Whose statement or what document is that specifically?

01:06:14 **A.** Fifty-two is a sworn statement in part of Christopher L. Bivens. Actually there's two pieces of paper that make up this exhibit. First page, fifty-two, is commonly known as a statement of sworn deposition, and page two appears to be a diagram of Christopher Bivens.

01:06:35 **Q.** Okay, and I'll take that back. Actually keep that. That -- the fax -- the date of the fax on that is what?

01:06:44 **A.** May thirty-first, 1994.

01:06:47 **Q.** Do you remember when Richard Thibodeau's preliminary hearing was?

01:06:55 **A.** No, I can't -- I don't recall precisely the date. I do not.

01:07:45 (People's Exhibit AAAA was marked for identification).

01:07:47 **Q.** If I were to show you a letter from Judge Elliot, might that refresh your recollection?

01:07:54 **A.** Yes.

01:07:57 **Q.** Showing you exhibit -- what has been marked as Exhibit 4-A, do you recognize that document?

01:08:11 MS. PEEBLES: Judge, I guess I'm going to object because the witness has already testified that he never faxed a document to Michael Bohrer. I don't know what the purpose of this line of questioning is.

01:08:22 He doesn't even -- he said he didn't even fax the
01:08:24 document so I don't know.

01:08:26 MR. MOODY: I believe he said he didn't fax it
01:08:27 to Michael Bohrer. I'm trying to establish with some
01:08:31 possibility of who he did fax it to.

01:08:33 THE COURT: I'll allow it.

01:08:34 **A.** It's a letter from Surrogate Judge Elliot to myself
01:08:39 dated May twenty-six, 1994.

01:08:41 **Q.** Okay, and in reviewing that, does that refresh your
01:08:43 recollection as to when Richard Thibodeau's preliminary
01:08:46 hearing was?

01:08:47 **A.** June first, 1994.

01:08:49 **Q.** Okay, and do you remember who or whether or not more
01:08:56 precisely Judge Walsh was assigned or was representing
01:09:00 Richard Thibodeau at that point in time?

01:09:02 **A.** He was. Attorney Walsh was, yes.

01:09:05 **Q.** Do you recollect whether at the preliminary hearing
01:09:09 on June first of 2000, or excuse me, of 1994 whether or not
01:09:13 Christopher Bivens testified?

01:09:20 MS. PEEBLES: Again, Judge, I'm objecting
01:09:22 under relevance here.

01:09:23 THE COURT: Yeah, I'm kind of losing the
01:09:25 relevance.

01:09:26 MR. MOODY: Judge, I -- I don't want to give
01:09:29 the witness the answer that I believe is happening, but

01:09:31 I think that if I can have just a little bit of leeway,
01:09:35 if he remembers I think it will become clear what I'm
01:09:38 trying to get at.

01:09:40 MS. PEEBLES: Judge, he said on recross that
01:09:43 he didn't remember faxing any documents to anyone so
01:09:48 that's his answer. Whatever Mr. Moody thinks he's
01:09:52 doing at this point is irrelevant.

01:09:55 THE COURT: Isn't it just bolstering?

01:09:57 MR. MOODY: Well, Judge, the insinuation is
01:10:00 out there somehow that Donald Dodd or someone in the
01:10:03 District Attorney's Office faxed --

01:10:05 THE COURT: You're assuming that I've taken
01:10:06 that insinuation.

01:10:08 MR. MOODY: I understand.

01:10:08 THE COURT: Because Mr. Dodd said he didn't
01:10:10 fax it.

01:10:10 MR. MOODY: Pardon me?

01:10:11 THE COURT: Mr. Dodd said he didn't fax it.

01:10:14 MR. MOODY: Well, I'm trying to refresh his
01:10:16 recollection as to whether he might because I believe
01:10:17 his testimony was he didn't fax it to Michael Bohrer.

01:10:21 MS. PEEBLES: No. His testimony was he didn't
01:10:22 fax it so you're trying to get him to say he did fax
01:10:24 it.

01:10:25 MR. MOODY: I'm trying to refresh his

01:10:27 recollection as to whether he did fax it.

01:10:29 THE COURT: How quickly are you going to get
01:10:30 there?

01:10:30 MR. MOODY: Pardon me?

01:10:31 THE COURT: And why's it relevant?

01:10:32 MR. MOODY: Well, I just think it explains --
01:10:36 I think it explains on who it was faxed to and
01:10:39 therefore might explain how it ended up in the hand of
01:10:42 Michael Bohrer but --

01:10:43 MS. PEEBLES: First of all, he said he didn't
01:10:46 know who it was faxed to.

01:10:47 THE COURT: His recollection is being
01:10:48 refreshed, Ms. Peebles.

01:10:49 MS. PEEBLES: No. He testified that he has no
01:10:52 idea and he was explaining facsimiles and the fact that
01:10:53 he had no recollection and he didn't fax it. Now he's
01:10:56 trying to impeach him.

01:10:57 MR. MOODY: Well, he just said he had no
01:10:59 recollection and what I'm trying to do is refresh his
01:11:01 recollection.

01:11:01 THE COURT: Get there fast please.

01:11:07 MR. MOODY: Let's get it this way. Actually I
01:11:09 got to get this marked.

01:11:11 (People's Exhibit BBBB was marked for
01:11:13 identification).

01:11:43 **Q.** I'm going to show you what's been marked as Exhibit
01:11:48 BBBB and just direct your attention to exhibit -- the first
01:11:50 page of that and ask you if you recollect now faxing
01:11:54 anything on May thirty-first, 1994.

01:11:57 THE COURT: I didn't hear you.

01:11:59 MR. MOODY: I'm sorry, I'm going to ask you,
01:12:01 Judge, I'm asking the witness if he now --

01:12:04 MS. PEEBLES: Judge, first of all, he never
01:12:05 said --

01:12:06 THE COURT: Hold on, Ms. Peebles. He was
01:12:08 talking. Mr. Moody.

01:12:08 MR. MOODY: If this refreshes his recollection
01:12:12 as to whether he may have faxed anything on May
01:12:15 thirty-first, 1994.

01:12:17 THE COURT: Ms. Peebles.

01:12:18 MS. PEEBLES: Okay, Judge, the witness did not
01:12:21 say he didn't recall, he said he didn't fax it, and the
01:12:25 question becomes how did it get in Mr. Bohrer's box,
01:12:28 and this witness has no idea, and he said he didn't fax
01:12:30 any documents, so I'm not quite sure why Mr. Moody
01:12:34 thinks he's refreshing Mr. Dodd's recollection when
01:12:37 he's already testified that he didn't fax any
01:12:39 documents.

01:12:39 THE COURT: Mr. Moody, I don't see where
01:12:41 you're going with this. Let's just move on.

01:13:25 MR. MOODY: I have no further questions.
01:13:27 THE COURT: Ms. Bianco?
01:13:28 MS. BIANCO: No, Judge. No further questions.
01:13:32 THE COURT: Mr. Dodd, you're done. Thank you.
01:13:34 THE WITNESS: Thank you.
01:13:35 THE COURT: Thank you, sir. Mr. Moody? Next?
01:13:42 MR. OAKES: Your Honor, the People call Darcy
01:13:44 Purdy.
01:13:45 THE COURT: Darcy Purdy.
01:14:05 THE CLERK: Stand up please. Raise your right
01:14:29 hand, put your left on the Bible.
01:14:31 DARCY PURDY, Called as a witness, having been duly
01:14:34 sworn, was examined and testified as follows:
01:14:34 THE CLERK: Please state your name for the
01:14:39 record.
01:14:39 THE WITNESS: Darcy Purdy.
01:14:41 THE CLERK: Spell your first name.
01:14:42 THE WITNESS: D-A-R-C-Y.
01:14:44 THE CLERK: And your last name?
01:14:45 THE WITNESS: P-U-R-D-Y.
01:14:47 THE CLERK: Have a seat please.
01:14:48 THE COURT: Ms. Purdy, before we start, I'm
01:14:50 going to ask you whether or not you consent to having
01:14:51 your testimony audio and video taped.
01:14:54 THE WITNESS: No, I'd rather not.

01:14:55 THE COURT: No consent. Okay, that's fine.

01:15:05 MR. OAKES: And Your Honor, before I begin
01:15:08 examination, can I have some exhibits marked?

01:15:09 THE COURT: Of course.

(People's Exhibit CCCC was marked for identification).

(People's Exhibit DDDD was marked for identification).

(People's Exhibit EEEE was marked for identification).

(People's Exhibit FFFF was marked for identification).

01:17:34 (People's Exhibit GGGG was marked for
01:17:37 identification).

DIRECT EXAMINATION

01:17:38 BY MR. OAKES:

01:17:39 **Q.** Good afternoon.

01:17:39 **A.** Good afternoon.

01:17:43 **Q.** Where are you employed, ma'am?

01:17:45 **A.** At Cardinale & DelVecchio Law Firm.

01:17:49 **Q.** What's your position with the law firm?

01:17:50 **A.** Just a legal assistant.

01:17:52 **Q.** And what are your duties as a legal assistant?

01:17:54 **A.** Handling traffic files, some criminal files for
01:17:59 Assigned Counsel and just answering the phone taking

01:18:02 messages.

01:18:03 **Q.** And how long have you worked for that law office as a legal assistant?

01:18:06 **A.** Fifteen months.

01:18:11 MR. OAKES: Your Honor, can I have the microphone please?

01:18:20 **Q.** And were you employed before that, Darcy?

01:18:23 **A.** Yes.

01:18:23 **Q.** Where were you employed before that?

01:18:24 **A.** ITT Technical Institute.

01:18:26 **Q.** And what was your position there?

01:18:27 **A.** A recruiter.

01:18:28 **Q.** And how long did you work there for?

01:18:30 **A.** Fourteen years.

01:18:31 **Q.** Darcy, do you know a person -- do you know a person by the name of Deb Vecchio?

01:18:57 **A.** Yes.

01:18:58 **Q.** And how do you know Deb Vecchio?

01:19:01 **A.** She was my landlord for a time.

01:19:05 **Q.** And when did you first meet Ms. Vecchio?

01:19:09 **A.** Like winter of ninety-two.

01:19:15 **Q.** And you said she was your landlord. You rented a place from her?

01:19:20 **A.** Yes.

01:19:21 **Q.** And where was that?

01:19:22 **A.** A trailer on Rice Road.

01:19:24 **Q.** And do you know who the trailer belonged to?

01:19:27 **A.** I believe her father.

01:19:29 **Q.** Do you recall his name?

01:19:32 **A.** I don't.

01:19:33 **Q.** And when you say Rice Road, do you know what
01:19:36 township that's in?

01:19:37 **A.** Parish.

01:19:38 **Q.** Was it a Parish mailing address?

01:19:40 **A.** Yes.

01:19:41 **Q.** Do you know if it's actually in the township of
01:19:44 Parish or township of Mexico?

01:19:45 **A.** I don't.

01:19:46 **Q.** Okay, but here in Oswego County?

01:19:48 **A.** Yes.

01:19:49 **Q.** And the trailer that you rented from Deb Vecchio,
01:19:53 how close was that to Deb Vecchio's residence?

01:19:56 **A.** You could see her place from there so a couple
01:20:01 hundred feet, or fifty, I'm not sure how far, but I could
01:20:03 see her house from there.

01:20:05 **Q.** Okay, close proximity?

01:20:07 **A.** Yes, walking distance, um hum.

01:20:34 MR. OAKES: Your Honor, can I approach the
01:20:37 witness?

01:20:37 THE COURT: Absolutely.

01:20:38 **Q.** Darcy, I'm handing you what's been received in evidence as Defendant's Exhibit 84. You mind taking that for a moment? Do you recognize that document?

01:20:50 **A.** Yes.

01:20:51 **Q.** Can you tell the Court what that document is?

01:20:52 **A.** Our lease.

01:20:54 **Q.** And when you say "our lease," who do you mean?

01:20:56 **A.** My ex-husband, Tom Rathbun.

01:20:59 **Q.** And who was the lease -- was you and Tom both living at that residence?

01:21:05 **A.** Yes.

01:21:05 **Q.** And who was the lease between?

01:21:07 **A.** Us and Deb Vecchio in care of Joyce Neat and Walter Rice, Sr.

01:21:15 **Q.** And did you sign that document?

01:21:17 **A.** Yes.

01:21:18 **Q.** Where does your signature appear on that?

01:21:21 **A.** On the top, first signature.

01:21:23 **Q.** Okay, and do you recall when you executed that lease?

01:21:29 **A.** I don't recall, but I know I've seen it so it was December of ninety-two.

01:21:35 **Q.** Okay, and for this lease, when was the lease term set to begin for you to move into the place?

01:21:43 **A.** I believe right away.

01:21:45 **Q.** Okay. So either late December or January?

01:21:50 **A.** Yes.

01:21:50 **Q.** So late December of ninety-two or January of
01:21:53 ninety-three?

01:21:54 **A.** Correct.

01:21:55 **Q.** And did you move in at that time period?

01:22:01 **A.** Yes.

01:22:01 **Q.** And who moved in at that time?

01:22:03 **A.** Both Tom and I.

01:22:04 **Q.** What was your relationship with Tom at that time?

01:22:08 **A.** We were still dating.

01:22:10 **Q.** At some point did your relationship with Tom change?

01:22:14 **A.** Yes. We got married.

01:22:16 **Q.** When was your wedding?

01:22:17 **A.** September tenth, 1994.

01:22:20 **Q.** And where were you married?

01:22:21 **A.** We were married at St. Michael's Church in Central
01:22:26 Square.

01:22:26 **Q.** Where were you living at the time that you got
01:22:29 married, on the date that you got married?

01:22:31 **A.** At 7271 Rice Road.

01:22:35 **Q.** And when we refer to 7271 Rice Road, that's the
01:22:39 trailer that you rented from Deb Vecchio?

01:22:41 **A.** Yes.

01:22:42 **Q.** Were there any other properties that you had ever

01:22:44 rented from her?

01:22:45 **A.** No.

01:22:45 **Q.** Just the one?

01:22:46 **A.** Correct.

01:22:48 **Q.** When was the last time you were at that property,
01:22:55 Darcy?

01:22:56 **A.** Just recently when I met you up there. I don't know
01:23:03 the exact date.

01:23:04 **Q.** Okay, sometime this winter?

01:23:05 **A.** Yes.

01:23:06 **Q.** January of this year?

01:23:09 **A.** Yes.

01:23:11 **Q.** And does the property appear today the same
01:23:14 condition as it was when you rented it?

01:23:16 **A.** No.

01:23:16 **Q.** How is it different?

01:23:18 **A.** The trailer no longer exists.

01:23:21 **Q.** Is there still a structure on the property?

01:23:23 **A.** Yes.

01:23:24 **Q.** What type of structure is on the property when you
01:23:27 visited in January of 2015?

01:23:28 **A.** A garage.

01:23:30 **Q.** And the garage that you saw there two months ago,
01:23:34 was it in the same condition as it was when you rented the
01:23:36 property if you recall?

01:23:41 **A.** No. I didn't recall it being the same.

01:23:45 **Q.** In what way is it different?

01:23:49 **A.** It seemed bigger.

01:23:59 THE COURT: Just give me a second please.

01:24:01 MR. OAKES: Certainly.

01:24:02 (Whereupon, there was a pause in the
01:25:23 proceeding.)

01:25:23 THE COURT: Sorry about that. Go ahead.

01:25:31 **Q.** Darcy, I'm going to hand you what's been received as
01:25:36 People's Exhibits FFF, GGG and HHH and ask you to take a
01:25:42 look at those. Do you recognize what's shown in those
01:25:52 photographs?

01:25:52 **A.** Yes.

01:25:52 **Q.** And what is it?

01:25:54 **A.** The garage.

01:25:55 **Q.** Okay, is that the property that you and I visited in
01:25:58 January?

01:25:58 **A.** Yes.

01:25:59 **Q.** And is that the property where the trailer was
01:26:02 located?

01:26:02 **A.** Yes.

01:26:03 **Q.** And again, the trailer's not shown in these
01:26:06 photographs though, correct?

01:26:07 **A.** Correct.

01:26:11 **Q.** Now Darcy, you testified a few moments ago that you

01:26:15 were living at the trailer when you got married on
01:26:18 September tenth of ninety-four?

01:26:19 **A.** Yes.

01:26:19 **Q.** From when you moved in in January of ninety-three to
01:26:23 the date of your wedding, had you lived at that residence
01:26:26 continuously?

01:26:27 **A.** Yes.

01:26:28 **Q.** Did you ever move to another location?

01:26:30 **A.** No.

01:26:31 **Q.** And what was the -- what was the street number for
01:26:35 the residence when you first moved in if you recall?

01:26:37 **A.** 7271 Rice Road.

01:26:40 **Q.** And did that address change at some point while you
01:26:43 were living there?

01:26:43 **A.** Yes.

01:26:44 **Q.** And do you recall what it changed to?

01:26:45 **A.** 66 Rice Road.

01:26:47 **Q.** Was that when the 911 system took effect?

01:26:50 **A.** I believe so.

01:26:51 **Q.** Now Darcy, we had talked previously about your
01:26:56 wedding, and how do you recall that you were living at that
01:26:59 residence at the time that you got married?

01:27:02 **A.** Well, I know I was living there because I was
01:27:07 getting ready for the wedding, and I would walk from that
01:27:10 property up to like Route 11 and back, I wouldn't go far

01:27:13 because it was kind of a remote road, but I know I was walking every day, and then I know that our rehearsal dinner was like a barbecue at that place.

01:27:25 **Q.** And Darcy, Darcy, I'm going to hand you what's been marked for identification as Exhibit 4-C or CCCC, an envelope that I'm taking out what's in it. Do you recognize the document that's contained in the envelope?

01:28:09 **A.** Yes.

01:28:10 **Q.** What is that document?

01:28:11 **A.** It's a copy of the registry book from what was St. Michael's Parish which is now Divine Mercy Parish.

01:28:19 **Q.** And who obtained that?

01:28:20 **A.** I did.

01:28:21 **Q.** And that document has a raised seal?

01:28:23 **A.** Yes.

01:28:24 **Q.** And when did you obtain that?

01:28:25 **A.** In January.

01:28:26 **Q.** Of this year?

01:28:27 **A.** Yes.

01:28:28 **Q.** And what -- what is significant about that document, Darcy?

01:28:32 **A.** It --

01:28:33 MS. PEEBLES: Judge, I'm going to object.

01:28:34 THE COURT: Why?

01:28:35 MS. PEEBLES: Why doesn't he ask her a

01:28:37 question. What's significant about that document?

01:28:43 THE COURT: Can you rephrase the question?

01:28:44 **Q.** That document, it's a registry for marriage?

01:28:48 **A.** Yes.

01:28:49 **Q.** And are you and Tom listed on that registry?

01:28:52 **A.** Yes.

01:28:53 **Q.** And at the time that you registered, is your address
01:28:56 reflected on that document?

01:28:58 **A.** Yes.

01:28:58 **Q.** And you recognize this registry?

01:29:03 **A.** Yes.

01:29:03 MR. OAKES: Your Honor, at this time the
01:29:04 People would offer Exhibit CCCC.

01:29:08 MS. PEEBLES: No objection.

01:29:08 THE COURT: No objection. Four C, four times
01:29:14 C is entered.

(People's Exhibit CCCC was received in
01:29:15 evidence).

01:29:15 MR. OAKES: For shorthand can we call it 4-C,
01:29:19 4-D, is that easier or --

01:29:20 THE COURT: That's fine. I just don't want to
01:29:21 be confused with the defendant's exhibits.

01:29:23 **Q.** Okay, so for Exhibit 4-C, that shows yours and Tom's
01:29:28 address at the time that you registered for the wedding and
01:29:32 the time of your wedding?

01:29:33 **A.** It's the address we were at when they logged it in as our wedding like had taken place because they're in order.

01:29:39 **Q.** Okay, and what address is reflected on there?

01:29:41 **A.** 7271 Rice Road, Parish, New York.

01:29:44 **Q.** Now after your wedding on September ten of 1994, did you continue to reside at that residence on Rice Road?

01:30:05 **A.** Yes.

01:30:05 **Q.** For how long?

01:30:06 **A.** We bought a property and put a mobile home on it in January of ninety-six.

01:30:14 **Q.** And where was that property located?

01:30:16 **A.** 15 Rafferty Drive, Central Square, New York.

01:30:20 **Q.** And when did you move to that property in Central Square?

01:30:23 **A.** I don't recall the exact date but we -- shortly after we got the land.

01:30:29 **Q.** Okay, do you recall what year, month or year?

01:30:31 **A.** 1996.

01:30:33 **Q.** And so from January of ninety-three through the end of 1995, you continuously lived at that address on Rice Road?

01:30:42 **A.** Yes.

01:30:42 **Q.** And because you lived there, did you receive mail at that address?

01:30:44 **A.** Yes.

01:30:49 **Q.** And did you continue to send mail from that address
01:30:52 while you were living there?

01:30:53 **A.** Yes.

01:30:54 **Q.** I'm first going to hand you, Darcy --

01:30:57 MS. PEEBLES: I haven't seen those.

01:30:59 MR. OAKES: Certainly.

01:31:29 **Q.** Darcy, I'm first going to hand you what's been
01:31:33 marked for identification as FFFF. Do you recognize that?

01:31:37 **A.** Yes.

01:31:37 **Q.** And what is that?

01:31:38 **A.** It's a 1995 beach planner, North Carolinas Coast to
01:31:45 Coast brochure.

01:31:46 **Q.** Okay, and when did you first see that or where did
01:31:50 you first receive that?

01:31:51 **A.** In the mail at Rice Road.

01:31:53 **Q.** Okay, and is there a mailing address on that beach
01:31:56 planner?

01:31:56 **A.** Yes.

01:31:56 **Q.** And who is it addressed to?

01:31:58 **A.** Darcy Rathbun, 7271 Rice Road, Parish, New York.

01:32:03 **Q.** And that was for 1995?

01:32:04 **A.** Yes.

01:32:05 **Q.** And again, that was your married name at the time?

01:32:07 **A.** Correct.

01:32:07 Q. And that's the address where you received it?

01:32:10 A. Yes.

01:32:11 Q. Handing you what's been marked as Exhibit EEEE, do
01:32:15 you recognize that?

01:32:16 A. Yes.

01:32:18 Q. What is that Darcy?

01:32:19 A. Like a store, the Music Stand catalog.

01:32:27 Q. Okay, and is there a year shown on that catalog?

01:32:30 A. It says Santa's edition, 1995.

01:32:35 Q. And where did you receive that?

01:32:37 A. At my address at Rice Road.

01:32:39 Q. And is that mailing address on that catalog?

01:32:42 A. Yes.

01:32:43 Q. And what is the address shown on there?

01:32:45 A. It's under Darcy Russell, 7271 Rice Road, Parish.

01:32:50 Q. And that's the address where you obtained it?

01:32:53 A. Yes.

01:32:54 Q. So in 1995 you obtained both those documents, the
01:32:58 catalog and the beach planner brochure?

01:33:00 A. Yes.

01:33:01 Q. At your residence on Rice Road?

01:33:03 A. Um hum. Yes.

01:33:04 Q. Darcy, I'm now going to hand you what's been marked
01:33:08 for identification as DDDD. Do you recognize that?

01:33:10 A. Yes.

01:33:11 **Q.** And what is that?

01:33:12 **A.** It's my address book that I used when planning the wedding.

01:33:16 **Q.** Okay, and I'm going to ask you to open it up to the inside page, and again, that inside page, is it the same condition as when you provided it to me?

01:33:26 **A.** Yes.

01:33:26 **Q.** And is it in the same condition as when you had it and prepared it?

01:33:30 **A.** Yes.

01:33:31 **Q.** And whose handwriting is on the inside, Darcy?

01:33:33 **A.** Mine.

01:33:34 **Q.** And is there an address, your address reflected there?

01:33:37 **A.** Yes.

01:33:37 **Q.** And what's the original address that's written there?

01:33:41 **A.** Seven --

01:33:43 MS. PEEBLES: Judge, I'm going to object.

01:33:44 THE COURT: Based on?

01:33:45 MS. PEEBLES: They're not in evidence. He's asking her to read from a document not in evidence.

01:33:50 MR. OAKES: That's fine. Your Honor, I would offer the three exhibits then at this time, Exhibit DDDD.

01:33:56 MS. PEEBLES: Her handwritten notes? Well,
01:33:59 I'll allow those in evidence if he agrees to allow Mr.
01:34:02 Bohrer's handwritten notes into evidence that were in
01:34:05 the box.

01:34:05 THE COURT: Hold it. Are we talking about
01:34:07 DDDD, that one you're objecting to?

01:34:10 MS. PEEBLES: I won't object to any of those
01:34:12 handwritten notes in all of her diaries if he agrees to
01:34:17 allow the handwritten notes from Mr. Bohrer.
01:34:20 Otherwise, I have the same objection that the
01:34:22 prosecutor has.

01:34:23 THE COURT: Let's deal with the exhibits. Are
01:34:25 you trying to move them all, Mr. Oakes?

01:34:26 MR. OAKES: I'll take them one at a time.

01:34:28 THE COURT: Which one are you offering first?

01:34:30 MR. OAKES: First I would offer EEEE, the
01:34:33 Santa's edition, 1995 catalog this witness testified
01:34:36 she received at that address.

01:34:38 MS. PEEBLES: I object to the relevance. I
01:34:39 won't -- I won't concede, Judge. I don't see how it's
01:34:42 relevant. She testified about receiving a piece of
01:34:46 mail where she was residing so I object.

01:34:48 MR. OAKES: Your Honor, and if I may, I think
01:34:49 it's very relevant. The defense has argued that
01:34:52 Jennifer Wescott and/or Roger Breckenridge lived at

01:34:55 this address in April of 1994. They've offered the
01:34:58 testimony of Deb Vecchio who said that Ms. -- that
01:35:01 Darcy and her husband moved in in January ninety-three,
01:35:05 but as best as she could remember, Ms. Vecchio said
01:35:09 they only lived there a few months. This establishes
01:35:11 that not only did they live there a few months, but
01:35:14 through ninety-three, ninety-four and the end of
01:35:16 ninety-five.

01:35:17 THE COURT: I'll allow it. They can move in.

01:35:19 MS. PEEBLES: I object to her handwritten
01:35:20 notes.

01:35:21 THE COURT: We haven't gotten to that.

01:35:23 MS. PEEBLES: He was just questioning her and
01:35:24 asked to have it moved in.

01:35:26 THE COURT: That was a whole different
01:35:28 exhibit.

01:35:28 MS. PEEBLES: Which exhibit are you asking to
01:35:30 be moved in?

01:35:31 MR. OAKES: I was taking them one at the time,
01:35:32 and I said 4-E, the Santa catalog from 1995, I had
01:35:36 moved and the Court received.

01:35:37 THE COURT: The Court will receive it.

(People's Exhibit EEEE was received in
01:35:38 evidence).

01:35:38 MR. OAKES: Okay, next I'm offering Exhibit

01:35:42 FFFF, the 1995 vacation planner that she received at that address on Rice Road that she's had in her possession with a mailing address of Rice Road.

01:35:52 MS. PEEBLES: I guess it's a weight issue. I have no objection. The Court can take a look at that and weigh it against her testimony. I have no objection.

01:35:58 THE COURT: Okay, so that's in now too.

(People's Exhibit FFFF was received in evidence).

01:35:59 MR. OAKES: Okay, and next, Your Honor, I was offering Exhibit DDDD which is her personal address book with names and numbers that has her handwriting on it.

01:36:10 THE COURT: Okay.

01:36:10 MS. PEEBLES: And that's where I have the objection and I will not object if he agrees to concede that Michael Bohrer's documents, the handwritten notes that he agreed he authored, if he allows those into evidence, and I have no objection whatsoever to allowing her handwritten notes.

01:36:26 MR. OAKES: Well, there's a distinction between the purpose. I don't see the relevance of Mr. Bohrer's speculations and ruminations regarding this case whereas the defense has directly put in issue who

01:36:40 lived at 66 Rice Road at the time of April of 1994.
01:36:44 What we're trying to establish is from January of
01:36:46 ninety-three continuously through 1995 Darcy and her
01:36:50 husband lived there which precludes Roger Breckenridge
01:36:53 and Jennifer Wescott from living there and precludes
01:36:56 them from having committed the allegations that are set
01:36:58 forth in Tonya Priest's claim.

01:37:01 MS. PEEBLES: Okay, well, I guess --

01:37:02 MR. OAKES: It's very relevant.

01:37:04 MS. PEEBLES: That's for the Court to decide,
01:37:06 not --

01:37:06 THE COURT: I'm going to keep it out. I'm
01:37:08 going to keep it out.

01:37:09 MR. OAKES: That's fine.

01:37:10 THE COURT: We have four times F and four
01:37:12 times E in.

01:37:33 MR. OAKES: Okay. Your Honor, again, may I
01:37:35 approach the witness?

01:37:37 **Q.** Darcy, I'm handing you what's been marked as -- for
01:37:40 identification as People's Exhibit GGGG and ask you if you
01:37:44 recognize that.

01:37:45 **A.** Yes.

01:37:45 **Q.** What is that?

01:37:47 **A.** It's a card that I sent my mother.

01:37:50 **Q.** Okay, and when did you send that to your mother?

01:37:53 **A.** May ninth, 1994 is the postmark date.

01:37:58 MS. PEEBLES: Well, Judge, now she's again
01:37:59 reading from something that's not been received into
01:38:02 evidence.

01:38:02 THE COURT: Yeah.

01:38:03 MS. PEEBLES: Objection.

01:38:04 THE COURT: Sustained.

01:38:04 **Q.** With or without reading from it, do you generally
01:38:07 recall when you sent that, Darcy?

01:38:10 **A.** Not until my mother sent it to me so --

01:38:14 THE COURT: I didn't hear what your answer
01:38:15 was.

01:38:15 THE WITNESS: Not until my mother just
01:38:17 recently sent it to me because she sent it to --

01:38:19 THE COURT: Okay.

01:38:20 THE WITNESS: You know, help out.

01:38:21 THE COURT: Okay.

01:38:22 **Q.** And you said your mother recently sent that to you.
01:38:25 Why is that, Darcy?

01:38:26 **A.** 'Cause I was looking for things with my address on
01:38:28 it from that time period.

01:38:30 **Q.** Okay, to verify that that's where you were living?

01:38:33 **A.** Yes.

01:38:34 MS. PEEBLES: Judge, objection.

01:38:35 THE COURT: What's the objection?

01:38:36 MS. PEEBLES: Leading.

01:38:37 THE COURT: It's leading. I'm not sure it's
01:38:39 going to be moved in any way so --

01:38:42 **Q.** Okay, and your mom sent it to you recently?

01:38:44 **A.** Yes.

01:38:44 **Q.** And you provided to me today?

01:38:46 **A.** Yes.

01:38:47 **Q.** Do you recognize the handwriting on the outside of
01:38:50 the envelope?

01:38:50 **A.** Yes.

01:38:50 **Q.** Whose handwriting is that?

01:38:51 **A.** Mine.

01:38:53 **Q.** And I would ask you to look at the card that's on
01:38:56 the inside.

01:38:57 MS. PEEBLES: Judge, I'm going to object if
01:38:58 she's going to read from something. It's not in
01:39:00 evidence.

01:39:00 THE COURT: I don't think he's asking her to
01:39:01 read.

01:39:02 THE WITNESS: There is nothing to read.

01:39:03 THE COURT: He hasn't asked her to read. He's
01:39:04 asked her to look at it. He hasn't asked her to read
01:39:07 anything yet.

01:39:08 **Q.** And do you recognize what's inside of that envelope?

01:39:10 **A.** Yes.

01:39:11 Q. And what is that?

01:39:11 A. It's a booklet about mothers.

01:39:13 Q. And have you seen that booklet before?

01:39:16 A. Yes.

01:39:16 Q. And where have you seen it before?

01:39:18 A. When I mailed it to her.

01:39:21 Q. And if you would put it back in the envelope please,
01:39:25 Darcy, and Darcy, where were you living when you sent this
01:39:31 to your mother?

01:39:32 A. At 7271 Rice Road.

01:39:34 Q. And how did you send it to her? Did you -- in what
01:39:39 manner did you send it to her?

01:39:40 A. I mailed it to her.

01:39:42 Q. Put stamps on it, placed it in the mail?

01:39:47 A. Yes.

01:39:47 Q. And do you recognize there being stamps on there?

01:39:50 A. Yes.

01:39:51 Q. And your return address is on there?

01:39:53 A. Yes.

01:39:58 MR. OAKES: Your Honor, at this time the
01:39:59 People would offer GGGG.

01:40:02 MS. PEEBLES: Same objection.

01:40:03 THE COURT: Sustained.

01:40:06 MR. OAKES: Your Honor, is it a relevance
01:40:08 ground? I'm just trying to find the ground for the

01:40:11 preclusion.

01:40:12 THE COURT: Same reason I precluded Mr.
01:40:15 Bohrer's handwritten notes.

01:40:18 MR. OAKES: Well, I'm not offering for the
01:40:20 truth of the matter of what's being asserted, Your
01:40:22 Honor.

01:40:22 THE COURT: How do you prove the address if
01:40:25 we're not -- that's what you're offering it for, right?

01:40:27 MR. OAKES: Well, for the address that she --
01:40:28 that she had written, but part of what I'm trying to
01:40:31 establish, Your Honor, is the date stamp that's on
01:40:33 there of May fifth of ninety-four when she mailed it
01:40:36 through the Postal Service which would establish when
01:40:40 she mailed it.

01:40:40 THE COURT: If you want it for that limited
01:40:42 purpose, that's fine.

01:40:43 MS. PEEBLES: That's for the truth of the
01:40:44 matter. That's for the truth of the matter asserted.
01:40:46 He is trying to say this stamp --

01:40:49 THE COURT: Your objection to Bohrer is
01:40:50 handwritten notes. This is from the Post Office. She
01:40:52 didn't put the date stamp on that.

01:40:55 MS. PEEBLES: I would object for the same
01:40:56 reason, Judge. Absolutely.

01:40:58 THE COURT: Bohrer's objection is because his

01:41:00 handwritten notes.

01:41:01 MS. PEEBLES: Well, it's not offered for the
01:41:04 truth. Bohrer's notes were not offered for the truth.
01:41:06 They were offered for he created them and for -- Judge.

01:41:13 THE COURT: Just a second, Ms. Peebles.

01:41:15 MR. OAKES: If I may, Your Honor, Mr. Bohrer's
01:41:17 ruminations in the notes, his personal thoughts on the
01:41:21 case, have no bearing on the evidence in this hearing.
01:41:23 The defense has very much put in issue who was living
01:41:27 at 66 Rice Road in April of 1994, the day that Heidi
01:41:32 was abducted, and who would have had access to that
01:41:34 property to commit these offenses. Darcy Purdy has now
01:41:38 testified that she lived there, and again, this is
01:41:40 relevant because it helps establish again, in May fifth
01:41:44 of 1994, if she's mailing it from that address, it
01:41:47 certainly helps to establish she was living there in
01:41:51 April of 1994.

01:41:51 MS. PEEBLES: Again, Judge, that's a weight
01:41:54 issue, it's for Court to decide, not for Mr. Oakes, and
01:41:56 as far as the notes that were drafted by Mr. Bohrer, it
01:41:59 has everything to do with establishing his obsession
01:42:02 with the case and the fact that he declared himself
01:42:05 Investigator A.

01:42:07 THE COURT: I'm going to allow -- I think it's
01:42:10 a different objection, Ms. Peebles. I'll allow this

01:42:12 one in because it's the date stamp, for the limited
01:42:15 purpose of the date stamp. Thank you.

(People's Exhibit GGGG was received in
01:42:20 evidence).

01:42:20 **Q.** Darcy, with GGGG you recognize it as something you
01:42:25 mailed from your home address on Rice Road?

01:42:27 **A.** Yes.

01:42:27 MS. PEEBLES: You know, Judge, I just have to
01:42:33 be clear on the record with regard to my objection on
01:42:34 that. In order to -- in order for the stamp -- if the
01:42:38 Court's considering to be relevant, you have to
01:42:41 consider her handwritten notation in the corner.
01:42:44 Otherwise, it doesn't matter, it doesn't have the --

01:42:46 THE COURT: I can discard the information.
01:42:49 Ms. Peebles, I'm going to let it in for the limited
01:42:52 purposes of date stamp only.

01:42:56 **Q.** Darcy, during the time that you lived on Rice Road,
01:42:59 did you know a young man by the name of Darron Vecchio?

01:43:02 **A.** Yes.

01:43:02 **Q.** And who was he?

01:43:03 **A.** One of Debbie Vecchio's sons.

01:43:06 **Q.** And did you ever have contact with Darron Vecchio?

01:43:10 **A.** Yes.

01:43:11 **Q.** And where did that contact take place?

01:43:13 **A.** Outside, you know, I mean he was a young kid at that

01:43:19 time so, you know, he would come down and talk to my
01:43:22 ex-husband. He was -- just seems like he was around, kids
01:43:28 were outside, you know.

01:43:30 **Q.** Darcy, during the time that you lived there, let me
01:43:33 ask you, what is your relationship with Jennifer Wescott?

01:43:36 **A.** I don't know a Jennifer Wescott.

01:43:38 **Q.** And what is your relationship with Roger
01:43:41 Breckenridge?

01:43:41 **A.** I don't know a Roger Breckenridge.

01:43:44 **Q.** You've never known a Jennifer Wescott or Roger
01:43:47 Breckenridge?

01:43:48 **A.** No, sir.

01:43:48 **Q.** Do you know a person by the name of Michael Bohrer?

01:43:50 **A.** No.

01:43:51 **Q.** Do you have a relationship with Mr. Bohrer?

01:43:57 **A.** No.

01:43:57 **Q.** What about James Steen, or he may go by the name of
01:44:02 Thumper. What was the nature of your relationship with
01:44:04 him?

01:44:04 **A.** None, don't know him.

01:44:18 MR. OAKES: Your Honor, I have no further
01:44:20 questions for the witness.

01:44:21 THE COURT: Ms. Peebles or Ms. -- Ms.
01:44:23 Peebles?

01:44:24 CROSS-EXAMINATION

01:44:25 BY MS. PEEBLES:

01:44:27 **Q.** Now Ms. Purdy, you testified you knew Darron
01:44:40 Vecchio?

01:44:40 **A.** Yes.

01:44:41 **Q.** And you were young when you lived at Rice Road when
01:44:47 you signed that lease?

01:44:48 **A.** Young twenties.

01:44:49 **Q.** You were twenty, twenty-one?

01:44:51 **A.** I'd have to do the math.

01:44:52 **Q.** Okay, was it -- would it be fair to say that at that
01:44:56 point in time you were partying quite a bit in the trailer?

01:45:01 **A.** No.

01:45:01 **Q.** You weren't drinking?

01:45:02 **A.** No.

01:45:03 **Q.** You didn't have any parties?

01:45:04 **A.** No.

01:45:04 **Q.** You didn't party with Darron Vecchio?

01:45:06 **A.** No.

01:45:06 **Q.** Were you aware that he had a structure that he had
01:45:10 built across the street from Rice Road?

01:45:12 **A.** No.

01:45:12 **Q.** Never saw that?

01:45:13 **A.** No.

01:45:13 **Q.** Never saw kids hanging around there?

01:45:15 **A.** No.

01:45:16 **Q.** When you signed that lease, you weren't -- you never met Walter Rice, is that fair to say?

01:45:25 **A.** No, I did meet him.

01:45:27 **Q.** Okay, but when you signed the lease did you meet Walter Rice?

01:45:29 **A.** No.

01:45:30 **Q.** In fact he was already in Florida, is that true?

01:45:32 **A.** Correct.

01:45:32 **Q.** So you were working particularly with Deb Vecchio, correct?

01:45:35 **A.** And her husband David.

01:45:36 **Q.** And she only let you sign a five-month lease in 1992 when you first signed that lease?

01:45:41 **A.** No.

01:45:42 **Q.** I'd like to hand Exhibit 84. I'm going to hand you what's been marked as Exhibit 84 and ask you to take a look at the second page and specifically to paragraph three to see if that refreshes your recollection about how long that lease was for.

01:46:16 (Whereupon, there was a pause in the proceeding.)

01:46:23 **A.** I see where you say that's where you saw that, but it also says that they wish to sign a lease for another year so I'm assuming there should be another lease that they would have had.

01:46:33 **Q.** Okay, you're assuming there was another lease? Do
01:46:35 you recall executing a second lease?
01:46:37 **A.** I recall signing more than one time with them.
01:46:39 **Q.** Do you have a copy of your second lease?
01:46:41 **A.** No.
01:46:43 **Q.** So that lease right there that you signed in 1992
01:46:47 actually was for five months, is that fair to say?
01:46:50 **A.** Correct.
01:46:51 **Q.** All right. Now and Walter Rice was in Florida and
01:46:54 he came back sometime in May, correct?
01:46:56 **A.** He came back, yes. I don't know when.
01:46:58 **Q.** Now, when Walter Rice returned from Florida, he went
01:47:01 over to the trailer, true?
01:47:03 **A.** He and Joyce actually lived inside the trailer with
01:47:07 us for a time.
01:47:09 **Q.** So the four of you were occupying the trailer at
01:47:13 that time?
01:47:13 **A.** Yes. Very awkward.
01:47:13 **Q.** Now is it fair to state Mr. Rice expressed anger
01:47:17 with the condition of the trailer when he returned from
01:47:19 Florida?
01:47:19 **A.** Not that I recall.
01:47:20 **Q.** And is it -- isn't it true that Walter Rice was
01:47:28 upset with the condition of the trailer and he wanted to
01:47:31 evict you?

01:47:32 **A.** No.

01:47:33 **Q.** Did you ever have a conversation with Deb Vecchio concerning Walter Rice and his anger toward the condition of the trailer?

01:47:43 **A.** No, I don't recall that.

01:47:47 MS. PEEBLES: No further questions.

01:47:56 THE COURT: Thank you. Mr. Oakes?

01:48:07 MR. OAKES: Thank you, Your Honor.

01:48:10 REDIRECT EXAMINATION

01:48:10 BY MR. OAKES:

01:48:11 **Q.** Darcy, looking at the second page of Exhibit 84, the lease, on paragraph three, what does it say for the first sentence?

01:48:23 **A.** Tenants --

01:48:24 THE COURT: What page?

01:48:25 MR. OAKES: I'm sorry, page two designated as the third paragraph.

01:48:30 **A.** Says, "Tenants named herein agree to occupy trailer on Rice Road at least until May first. At this time, upon landlord's approval, if tenants wish to continue to occupy trailer, they will sign lease for one year."

01:48:42 **Q.** Okay, so when it says at least until May first, that wasn't setting an outside limit but a minimum period that you had to live there.

01:48:50 **A.** Correct.

01:48:58 **Q.** And turning to the first page of the exhibit where it says "rent," this paragraph here, can you read that please?

01:49:05 **A.** "Rent will be payable in full to the landlord in the amount of four-hundred fifty dollars per month. Tenants agree to pay the landlord on the first of each month. Rent may be increased after twelve months from the date of the lease. Any other pet other than fish will require an extra hundred dollars security deposit."

01:49:24 **Q.** The lease you have in your hand anticipated you could be there as long as twelve months.

01:49:28 **A.** Correct.

01:49:28 **Q.** And your recollection is that you executed other leases?

01:49:30 **A.** I remember signing more than one thing because we also added a pet at one time.

01:49:35 **Q.** So there's essentially -- was there an addendum to the lease then or a new lease because of the pet?

01:49:40 **A.** I don't remember.

01:49:42 **Q.** Okay, how certain are you that you lived at that address --

01:49:47 MS. PEEBLES: Objection.

01:49:49 THE COURT: Can I hear the question first?

01:49:51 **Q.** How certain are you that you lived at the address from January of 1993 to the end of 1995?

01:49:58 THE COURT: Don't answer that yet.

01:50:00 MS. PEEBLES: Bolstering.

01:50:01 THE COURT: I'll sustain it.

01:50:02 MR. OAKES: Okay, I have no further questions, Your Honor.

01:50:04 MS. PEEBLES: I just have a couple quick followups.

RECROSS-EXAMINATION

BY MS. PEEBLES:

01:50:08 **Q.** The lease that you signed said May first and that was because Mr. Walter Rice was returning from Florida, fair, fair to say?

01:50:14 **A.** Yes.

01:50:15 **Q.** Okay, and now it's your testimony that the -- did you -- did you know Walter Rice before you signed this lease?

01:50:21 **A.** No.

01:50:21 **Q.** So it's your testimony that the four of you were living together in the trailer after May first of 1993?

01:50:30 MR. OAKES: Objection, beyond the scope, Your Honor.

01:50:32 MS. PEEBLES: Well --

01:50:33 THE COURT: No, it's fine, I'll allow it.

01:50:36 **A.** Could you repeat the question?

01:50:37 **Q.** Yeah. It's your testimony that the four of you

01:50:40 were -- a man you didn't know, the four of you moved in
01:50:43 together in this trailer in May of 1993?

01:50:47 A. We didn't move in together. Can I explain?

01:50:50 Q. Well, you were living together.

01:50:53 A. At some point.

01:50:54 Q. You were living together?

01:50:55 A. They came back and we were told that they were going
01:50:58 to build a place inside the garage and be living over
01:51:01 there.

01:51:02 Q. And they moved in with you and you didn't know them.

01:51:06 A. Correct.

01:51:06 Q. And you were still paying rent while he's residing
01:51:10 in there?

01:51:11 A. We had to pay rent, but they -- they allowed us to
01:51:13 fix up things and take money, we could paint and they took
01:51:17 money off rent, so I mean I don't -- it was a very awkward
01:51:23 situation. We were in our twenties with no place to move
01:51:25 to so we had really no choice when they moved back.

01:51:30 Q. And --

01:51:32 MS. PEEBLES: I have no further questions.
01:51:33 Thank you.

01:51:33 THE COURT: Thank you. Mr. Oakes?

01:51:41 MR. OAKES: No, thank you, Your Honor.

01:51:42 THE COURT: You can step down. Thank you.
01:51:56 Next witness?

01:52:00 MR. MOODY: People call Dale Yager.

01:52:03 THE COURT: Dale Yager.

01:52:05 MR. MOODY: Yager, yes.

01:52:35 DALE YAGER, Called as a witness, having been duly
01:52:36 sworn, was examined and testified as follows:

01:52:36 THE CLERK: Please state your name for the
01:52:43 record.

01:52:43 THE WITNESS: Dale Yager.

01:52:44 THE CLERK: Spell your last name.

01:52:47 THE WITNESS: Y-A-G-E-R.

01:52:51 THE COURT: Mr. Yager, before Mr. Moody starts
01:52:54 asking you questions, I'm going to ask you as to
01:52:56 whether or not you consent to having your testimony
01:52:57 audio and videotaped.

01:52:59 THE WITNESS: Yes.

01:53:02 THE COURT: Thank you.

01:53:03 DIRECT EXAMINATION

01:53:03 BY MR. MOODY:

01:53:07 **Q.** Mr. Yager, are you currently employed?

01:53:10 **A.** Yes, I am.

01:53:10 **Q.** Whereabouts?

01:53:11 **A.** In North Carolina at the Home Depot.

01:53:14 **Q.** And how long have you been doing that?

01:53:15 **A.** Nine years.

01:53:16 **Q.** And prior to -- I assume you live in North Carolina

01:53:22 then if you work there.
01:53:22 **A.** Correct.
01:53:23 **Q.** How long have you lived in North Carolina?
01:53:25 **A.** Nine years.
01:53:26 **Q.** Prior to moving to North Carolina, where did you
01:53:28 work?
01:53:28 **A.** Central Square, New York.
01:53:29 **Q.** And when you lived in Central Square were you
01:53:32 employed there?
01:53:33 **A.** I was self-employed for five years before I moved to
01:53:39 North Carolina.
01:53:40 **Q.** And before you were self-employed what did you do?
01:53:42 **A.** I worked for the Oswego County Sheriff's Department.
01:53:44 **Q.** And from when to when if you remember?
01:53:45 **A.** From 1984 to 2002.
01:53:58 **Q.** And what was the highest rank you achieved?
01:54:00 **A.** Criminal investigator.
01:54:02 **Q.** And how long were you investigator for if you
01:54:05 remember?
01:54:05 **A.** Fourteen years.
01:54:07 **Q.** So back in 1994 you would have been an investigator?
01:54:12 **A.** That's correct.
01:54:13 **Q.** And at some point in time did you have some
01:54:16 involvement in the Heidi Allen investigation?
01:54:18 **A.** Yes, I did.

01:54:19 **Q.** I want to specifically ask you -- well, I guess
01:54:24 start it this way. Do you know the date when she
01:54:26 disappeared on?

01:54:26 **A.** Yes, April third, 1994.

01:54:30 **Q.** And did you become involved in the case within a
01:54:36 week of that investigation or her disappearing?

01:54:40 **A.** Yes.

01:54:40 **Q.** Specifically, if you remember, where was the
01:54:44 investigation located right after she disappeared?

01:54:47 **A.** In New Haven at the fire station.

01:54:52 **Q.** Sometimes called the fire barn?

01:54:56 **A.** Fire barn, yes.

01:54:58 **Q.** And when you were there, can you describe the setup,
01:55:02 what was going on?

01:55:03 **A.** Actually there are a lot of different things going
01:55:07 on. That's where the search was organized. Fire
01:55:12 department was doing whatever support that they could do
01:55:14 and we also had a space set up for orchestrating the
01:55:19 investigation.

01:55:20 **Q.** Did that space that you had set up include some
01:55:23 phones?

01:55:23 **A.** Yes.

01:55:23 **Q.** What was the purpose of the phones?

01:55:26 **A.** To accept any kind of tip information regarding the
01:55:30 Heidi Allen case that anybody could call in.

01:55:33 **Q.** And moving now specifically to April seventh of 1994, were you working that day?

01:55:40 **A.** Yes, I was.

01:55:40 **Q.** And if you remember, what was your assignment on April seven?

01:55:44 **A.** I -- I was assigned to take calls at the call center.

01:55:48 **Q.** In the process of taking calls what -- what would you do to detail the information that came in, to record it?

01:55:57 **A.** I would use a lead sheet and document what I was told over the phone for additional -- to be passed on for whether or not there was additional followup on it.

01:56:09 **Q.** And when you say you would document it and then pass it on, who would you pass it on to or how would you pass it on?

01:56:22 **A.** It would be to the ranks of the criminal division. At that time it was Lieutenant Goodsell and Investigator Whipple also was looking at all that documentation.

01:56:31 **Q.** I want to show you what's been marked and received as Defendant's Exhibit 19 and ask you if you recognize that.

01:56:45 **A.** Yes, I do.

01:56:57 **Q.** And what is that?

01:56:59 **A.** This is a lead sheet that I filled out apparently on

01:57:04 April seventh.

01:57:05 **Q.** When you -- how do you recognize that you filled it out?

01:57:08 **A.** It's clearly my handwriting.

01:57:11 **Q.** Does it also contain your name?

01:57:14 **A.** Yes.

01:57:14 **Q.** And did you take that information down in person or on the phone?

01:57:19 **A.** Over the phone.

01:57:20 **Q.** And does it indicate who the lead came from?

01:57:25 **A.** Yes. It came from a Darlene Upcraft.

01:57:29 **Q.** And are there any notes or recordings in your handwriting about what she told you?

01:57:38 **A.** Yes, sir.

01:57:39 **Q.** And what specifically did she tell you?

01:57:43 **A.** She advised me that she was on her way to sunrise service and had passed by the D & W store, had noticed that it was open, had a thought at that time about her son might want to get a soda or something on the way home, continued on to the sunrise service, and then after leaving there, having driven back by the D & W Convenience Store and stating that she didn't notice anything there when she came back through.

01:58:16 **Q.** When you say she didn't notice anything, do you remember what specifically you would have been or you were

01:58:23 talking about when she said she didn't notice, what kind of
01:58:26 things you wanted her or asked her about knowing?

01:58:28 **A.** I don't recall that. I -- I know that I was paying
01:58:33 attention to the timeline when she came back as to whether
01:58:36 or not it had been cordoned off versus not having been
01:58:39 cordoned off and whether it was prior to taking -- the
01:58:43 Sheriff's Department taking possession of the building.

01:58:46 **Q.** And would it have been cordoned off before or after
01:58:51 Heidi Allen disappeared?

01:58:52 **A.** After Heidi Allen disappeared.

01:58:54 **Q.** And what time did she say that she -- she went by
01:58:57 the D & W on her way back from church?

01:59:00 MS. PEEBLES: Judge, it appears that he's
01:59:02 leading the witness so perhaps he should --

01:59:05 THE COURT: I don't know if he's leading.

01:59:07 MS. PEEBLES: He's reading from a document.
01:59:08 The problem is I don't know if he's reading from the
01:59:10 document or his independent recollection.

01:59:12 THE COURT: That's -- he can't read. I don't
01:59:15 think you're leading, but ask him if he has a
01:59:16 recollection that needs to be refreshed or he has a --

01:59:19 MR. MOODY: Well, the document is in evidence
01:59:20 so that's why I was -- but we can do it that way,
01:59:23 that's fine. I'll take the document back.

01:59:25 MS. PEEBLES: I would just like to know

01:59:27 whether he independently recalls this. That would be
01:59:30 what I'm interested in.

01:59:30 **Q.** Do you independently recall what time she told you
01:59:33 she went by?

01:59:34 **A.** Again, I don't recall the specific conversation or
01:59:40 whatever. My documentation shows that she had said she
01:59:44 called around 7:30 or went back by about 7:35.

01:59:49 **Q.** Okay, when you say you don't recall, you've seen
01:59:52 this document before?

01:59:53 **A.** That's correct.

01:59:54 **Q.** And if I were to show you the document would you --
01:59:58 you said around 7:35, would refresh your recollection as to
02:00:01 specifically what time?

02:00:02 **A.** As I've recalled on the document, 7:35 to 7:40 I
02:00:08 think it was.

02:00:09 **Q.** Do you not remember? I'm asking you if you looked
02:00:11 at the document if it would refresh your recollection.

02:00:13 **A.** I would have to look at the document.

02:00:16 **Q.** Showing you Exhibit B, I'll turn you to the second
02:00:19 page, if you could look at that document yourself and see
02:00:21 if that refreshes your recollection.

02:00:22 **A.** It does.

02:00:23 **Q.** And -- take it back now. What time did she tell you
02:00:27 that she went by?

02:00:28 **A.** 7:31.

02:00:30 **Q.** And if you know, what time was the last sale made on the cash register at the D & W?

02:00:39 **A.** I believe it was 7:42.

02:00:41 **Q.** Now, she told you that she didn't see anything or didn't remember seeing anything you testified to, is that right?

02:00:47 **A.** Correct.

02:00:48 **Q.** And did you ask her or inquire if you remember anything about a vehicle?

02:00:56 **A.** I don't recall if I specifically asked her, but I did write down what she had told me that she had seen.

02:01:05 **Q.** Did she mention anything about seeing a vehicle either on her way to church or coming back from church?

02:01:12 **A.** No, sir.

02:01:14 **Q.** Were you specifically interested as an investigator about vehicles coming into and out of the D & W?

02:01:20 **A.** Yes.

02:01:21 **Q.** Do you remember if you took other leads around -- on April seventh that indicated vehicles either in the area or on the road in front of the D & W?

02:01:32 **A.** Yes, I did.

02:02:04 (People's Exhibit HHHH was marked for identification).

02:02:09 **Q.** And before we move on actually from this lead, do you remember whether or not Ms. Upcraft gave you any

02:02:14 information about anyone else who might have been -- that
02:02:18 she knew that might have been on the road at the same time
02:02:20 she was there?

02:02:21 **A.** Indicated that a relative of theirs, I think the
02:02:25 last name is DeSharn (ph) was -- left church behind them.

02:02:31 **Q.** Okay, and did you contact these other people, I
02:02:36 think you said their name was DeSharn (ph)?

02:02:39 **A.** I called the number that she had given me and I
02:02:42 believe that they had no information.

02:02:43 **Q.** Now you said that you took some other leads that
02:02:51 mentioned vehicles that -- that afternoon, or excuse me,
02:02:55 that night?

02:02:56 **A.** That's correct.

02:02:58 **Q.** Do you remember specifically whether it was before
02:02:59 or after Ms. Upcraft's lead?

02:03:02 **A.** Specifically I don't remember.

02:03:05 **Q.** I want to show you what's been marked as 4-H, and if
02:03:11 I were to show you some documentation, a lead, would that
02:03:15 refresh your recollection?

02:03:16 **A.** Yes.

02:03:16 **Q.** Okay, showing you what's been marked Exhibit 4-H do
02:03:19 you recognize that?

02:03:20 **A.** That's also a lead that I took that same evening of
02:03:25 April seventh.

02:03:26 **Q.** Okay, if you could review that and refresh your

02:03:28 recollection as to whether or not that refreshes your recollection as to whether or not you took documentation, or excuse me, took a lead before or after Ms. Upcraft had talked about a vehicle, and if you need to see Ms. Upcraft's lead, it's in evidence to compare.

02:04:01 **A.** Okay.

02:04:03 **Q.** Does that refresh your recollection?

02:04:06 **A.** Yes.

02:04:06 **Q.** And does this lead mention a vehicle?

02:04:09 **A.** Yes, it does.

02:04:10 **Q.** And do you remember whether or not this was before or after the lead you took from Ms. Upcraft?

02:04:16 **A.** The lead came in approximately eight minutes before the Upcraft lead.

02:04:22 **Q.** And what do you remember about that lead about a vehicle?

02:04:30 **A.** That person, Missy Parkhurst, had mentioned that she did not notice any vehicle on her way to church, had followed a vehicle, a car, on her way back from church that had turned in front of her on to 104B, but she had no actual description of that vehicle.

02:05:02 **Q.** The vehicle, when you say that vehicle, which one do you mean?

02:05:05 **A.** The car that had turned in front of her on her way back from church.

02:05:10 **Q.** And if you recollect, what time did Ms. Parkhurst
02:05:15 say that she went by the D & W?

02:05:18 **A.** On the way?

02:05:19 **Q.** Excuse me, on the way back from.

02:05:21 **A.** On the way back.

02:05:22 MS. PEEBLES: Judge, I guess I'm going to
02:05:23 object as to relevance, and it's eight minutes before,
02:05:27 I'm not entirely --

02:05:28 THE COURT: I think you're trying to impeach
02:05:31 Ms. Upcraft's testimony.

02:05:33 MR. MOODY: To an extent, Judge, and also
02:05:35 their argument on Ms. Upcraft is there was some mention
02:05:37 of a vehicle, and then there was a followup, and my
02:05:39 argument in part is that Mr. Yager was taking
02:05:44 information about vehicles if they were mentioned. Ms.
02:05:47 Upcraft's lead does not mention, and certainly if she
02:05:49 had mentioned it, they would have followed up on it.

02:05:51 THE COURT: I'll allow it, go ahead.

02:05:53 **A.** Could I hear the question again?

02:05:55 **Q.** Sure. Do you remember approximately what time Ms.
02:05:57 Parkhurst said she was -- after she left church she was
02:06:01 heading back to home when she passed the D & W?

02:06:05 **A.** That was about 7:35 to 7:40.

02:06:08 **Q.** To your knowledge, was any followup done on Ms.
02:06:17 Upcraft?

02:06:18 **A.** That I do not know.

02:06:23 **Q.** Now you mentioned that, and I think you said this, but what time did Ms. Upcraft if you remember said that she was -- she passed the D & W on her way to church?

02:06:51 MS. PEEBLES: Objection. Asked and answered.

02:06:52 THE COURT: No, it was answered specifically on the way back. I don't think he ever said on the way to.

02:06:57 MS. PEEBLES: No, he said on the way because his testimony would make no sense. He said 7:31, and she didn't drive back until the tape was around the D & W.

02:07:07 THE COURT: That wasn't his testimony.

02:07:09 MR. MOODY: I don't believe that was her testimony and that was not my question.

02:07:12 THE COURT: Hold on. The question was asked what time she drove back from church, and he approximated it at 7:30 to -- 7:35 to 7:40, and specifically he said Ms. Upcraft said 7:31. That was the return time from church, right?

02:07:29 THE WITNESS: That's correct.

02:07:29 THE COURT: I don't recall there being a question as to when she went to church other than she was going to the sunrise service so you can answer the question.

02:07:35 THE WITNESS: I believe that was about 6:35
02:07:42 a.m.
02:07:45 **Q.** And based on your knowledge of the investigation,
02:07:48 would Heidi Allen have been in the store from 6:35 until
02:07:53 approximately 7:31?
02:07:55 MS. PEEBLES: Objection, relevance.
02:07:57 THE COURT: I think it's very relevant. I'll
02:07:59 allow it.
02:08:01 MS. PEEBLES: Through this witness?
02:08:01 THE COURT: It's his personal knowledge.
02:08:03 MS. PEEBLES: He doesn't even know, Judge. He
02:08:04 didn't even remember anything that was talked about in
02:08:06 the report till he --
02:08:07 THE COURT: I'll allow it. If he -- if it's
02:08:10 from his memory. It's a weight, go ahead.
02:08:13 THE WITNESS: From information I had received
02:08:15 that yes, Heidi Allen would have been in the store
02:08:17 working during those times.
02:08:19 MS. PEEBLES: Objection, hearsay.
02:08:20 THE COURT: That would be sustained.
02:08:24 MR. MOODY: I have no further questions.
02:08:25 THE COURT: Can I just have a second, Ms.
02:08:28 Peebles, please?
02:08:29 MS. PEEBLES: Sure.
02:08:29 (Whereupon, there was a pause in the

02:08:41 proceeding.)

02:08:41 THE COURT: Okay, Ms. Peebles.

02:08:44 CROSS-EXAMINATION

02:08:44 BY MS. PEEBLES:

02:08:45 **Q.** Now so we're clear, you have no independent
02:08:53 recollection about interviewing Ms. Upcraft, is that fair?

02:08:57 **A.** I never interviewed her in person.

02:09:00 **Q.** You have no independent recollection regarding the
02:09:03 lead that you took which is Defendant's Exhibit 19,
02:09:06 correct?

02:09:07 **A.** I don't recall the exact content of that, correct.

02:09:10 **Q.** So essentially your testimony, when you're talking
02:09:13 about when approximately she drove by and when
02:09:16 approximately she was on her way to sunrise service, that's
02:09:19 all just as a result of reading Defendant's Exhibit 19, is
02:09:22 that fair to say?

02:09:23 **A.** The documentation that I wrote, correct.

02:09:26 **Q.** Right, correct. Now, would you agree with me that
02:09:32 Defendant's Exhibit 19 essentially states that Ms. Upcraft
02:09:37 didn't see anything. She doesn't mention a vehicle, no --
02:09:40 nothing is contained in this document, right? Nothing was
02:09:43 written down regarding any kind of a vehicle, correct?

02:09:45 **A.** That's absolutely correct.

02:09:47 **Q.** Now were you aware that sheriff's deputies contacted
02:09:53 Ms. Upcraft not once but twice and went to her house to

02:09:57 attempt to interview her about a van?

02:09:59 **A.** I have no knowledge of that.

02:10:02 **Q.** But if this is what she saw, there would be no
02:10:15 reason to visit Ms. Upcraft and interview her again a
02:10:18 second time, correct?

02:10:20 **A.** That's not determined by me, that was determined by
02:10:23 other people in the department.

02:10:24 **Q.** Well, if someone calls in a lead and says I drove by
02:10:28 and I didn't see a thing, there would be no reason to
02:10:31 follow up and do another interview would there?

02:10:33 MR. MOODY: Objection, Judge. I think he said
02:10:35 that wasn't determined by him.

02:10:37 THE COURT: Sustained.

02:10:37 **Q.** Well, I'm going to hand you what's been marked as
02:10:40 Defense Exhibit 19. You were an investigator at the time?

02:10:42 **A.** Yes.

02:10:43 **Q.** Okay, taking a look at what's -- the information
02:10:45 contained in Defendant's Exhibit 19, as an investigator,
02:10:49 would there be any reason to follow up with Ms. Upcraft if
02:10:51 that's the information that she provided?

02:10:54 MR. MOODY: Judge, now it's speculation and
02:10:56 he's -- and he said that wasn't determined by him.

02:10:59 MS. PEEBLES: I'm asking him in his capacity
02:11:01 as an investigator.

02:11:02 THE COURT: But he also said he doesn't make

02:11:04 that call so I'll sustain the objection.
02:11:09 **Q.** So you were not aware of the fact that investigators
02:11:15 went to Ms. Upcraft's house and asked her to describe the
02:11:18 van she saw the morning she drove by?
02:11:21 MR. MOODY: Objection. Asked and answered.
02:11:23 THE COURT: Sustained.
02:11:29 **Q.** Now you would agree with me that the time that Ms.
02:11:34 Upcraft drove by at 6:35, if in fact she saw a vehicle, a
02:11:39 van, that would still be important as part of this
02:11:41 investigation, true?
02:11:43 **A.** Yes.
02:11:44 **Q.** So the fact that she drove by at 6:35 and saw a van,
02:11:48 that would still be important and would deserve followup,
02:11:52 correct?
02:11:52 **A.** Sure.
02:11:53 **Q.** Now you -- you'll prepare a lead sheet in a case and
02:12:09 a determination is made later on as to whether or not
02:12:11 there's a necessity for followup, correct?
02:12:13 **A.** Correct.
02:12:14 **Q.** And all of those lead sheets had numbers associated
02:12:18 with them, is that fair to say?
02:12:19 **A.** Correct.
02:12:20 **Q.** And if there was any bit of information that was
02:12:24 called in and you were part of that, you were basically
02:12:28 writing down on the lead sheets and then it was assigned a

02:12:31 number, correct?

02:12:31 **A.** Correct.

02:12:32 **Q.** And that was a good way to keep track of, you know,
02:12:36 numerically so that you could follow up on things, and
02:12:39 anything that was assigned a number was basically assigned
02:12:42 to other investigators to follow up on, true?

02:12:45 MR. MOODY: Objection. The basis of
02:12:46 knowledge?

02:12:47 THE COURT: I'm not sure I understand the
02:12:48 question to be honest with you. Can you rephrase the
02:12:50 question?

02:12:51 MS. PEEBLES: It might have been a compound
02:12:52 question.

02:12:53 **Q.** I guess my -- when -- once a lead number was
02:12:57 assigned to a particular lead, then that information was
02:13:02 turned over and others were assigned to follow up on it, is
02:13:07 that correct?

02:13:07 **A.** I believe so, yes.

02:13:07 **Q.** And anything that was deemed marginally relevant
02:13:15 would be assigned a lead number, is that fair to say?

02:13:18 MR. MOODY: I'm going to object to marginally
02:13:21 relevant. I think he said that -- I don't know that
02:13:23 his -- trying to sputter. I don't know his job is to
02:13:27 determine what was assigned a lead number or not.

02:13:30 THE COURT: I'll allow it. It's based on his

02:13:33 knowledge of lead sheets and lead numbers.
02:13:35 **A.** Lead sheets were evaluated for the different values
02:13:39 of what is most important to least important and would be
02:13:44 followed up based on that determination as a typical
02:13:48 procedure, yes.
02:13:50 **Q.** And is it fair to say that there was no lead that
02:13:56 was either too small or too big in a case of this
02:13:59 magnitude?
02:14:00 **A.** Absolutely.
02:14:02 MR. MOODY: Objection. Fair to say calls for
02:14:03 speculation.
02:14:04 THE COURT: It's within common knowledge. Go
02:14:05 ahead and answer it.
02:14:07 THE WITNESS: Absolutely. We would follow up
02:14:08 on anything.
02:14:12 MS. PEEBLES: No further questions. Thank
02:14:14 you.
02:14:14 THE COURT: Mr. Moody? Redirect?
02:14:18 MR. MOODY: Nothing further.
02:14:20 THE COURT: Next witness. Do you want to take
02:14:23 ten minutes? 2:15 right now.
02:14:26 MR. OAKES: Sure.
02:14:27 MS. PEEBLES: Sure.
02:14:28 THE COURT: How many witnesses do you have
02:14:30 lined up today?

02:14:30 MR. OAKES: Three. I know we have Joe Lisi from the investigator's office, Investigator Pietrosky.

02:14:36 THE COURT: So we have enough to fill the day.

02:14:39 MR. OAKES: We should have.

02:14:40 THE COURT: We'll be back at 2:20.

02:24:59 (Whereupon, there was a recess.)

02:25:05 MR. OAKES: Joseph Lisi, Your Honor.

02:25:07 THE COURT: Joseph Lisi. Mr. Lisi.

02:25:38 THE CLERK: Raise your right hand, left hand on the Bible.

02:25:45 JOSEPH LISI, Called as a witness, having been duly sworn, was examined and testified as follows:

02:25:46 THE CLERK: Please state your name for the record.

02:25:53 THE WITNESS: Joseph Lisi. L-I-S-I.

02:25:56 THE CLERK: Thank you.

02:25:57 THE COURT: Mr. Lisi, before you start answering any questions from Mr. Oakes, I'm going to ask you whether or not you consent to having your testimony audio and videotaped.

02:26:05 THE WITNESS: I have no objections to that.

02:26:12 THE COURT: Go ahead, Mr. Oakes.

02:26:13 MR. OAKES: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. OAKES:

02:26:15 **Q.** Good afternoon, Investigator Lisi.

02:26:16 **A.** Good afternoon, Mr. Oakes.

02:26:17 **Q.** Can you please tell the Court where you're employed?

02:26:20 **A.** I'm employed by the Onondaga County Medical
02:26:23 Examiner's Office as a forensic investigator.

02:26:25 **Q.** And what are your duties as a forensic investigator?

02:26:27 **A.** As a forensic investigator my duties entail
02:26:31 investigating deaths whether natural, unnatural causes.
02:26:37 I'm actually going to scene investigations talking to law
02:26:41 enforcement, talking to families and facilitating the death
02:26:45 investigation.

02:26:45 **Q.** How long have you worked as a forensic investigator?

02:26:49 **A.** Since August of 2004.

02:26:51 **Q.** And have you been continuously employed in that
02:26:55 position since that time?

02:26:56 **A.** Yes, I have.

02:26:57 **Q.** And is that when you joined the Onondaga County ME's
02:27:00 Office?

02:27:00 **A.** No. I joined the Onondaga County ME's office in
02:27:03 November of 2002 as a forensic autopsy technician.

02:27:07 **Q.** And what are your duties as a forensic autopsy?

02:27:10 **A.** As a forensic autopsy technician, my duties entail
02:27:15 performing the autopsies, assisting the medical examiners
02:27:18 in the autopsy room, photographing, collecting evidence,
02:27:22 performing x-rays and basically facilitating the autopsies

02:27:26 with the physicians.
02:27:28 **Q.** And what is your educational background or training
02:27:32 background that qualifies you as a forensic investigator?
02:27:36 **A.** I have a Bachelor's Degree in criminal justice and
02:27:39 criminology from Le Moyne College. I'm also a board
02:27:43 certified medicolegal death investigator with the American
02:27:47 Board of Medicolegal Death Investigators.
02:27:50 **Q.** When you say board certified, did you have to take
02:27:52 an exam to become certified?
02:27:53 **A.** Yes, I did.
02:27:54 **Q.** And when did you first become certified?
02:27:56 **A.** September of 2009.
02:27:58 **Q.** And have you been continuously certified since that
02:28:01 time?
02:28:01 **A.** Yes, I have.
02:28:02 **Q.** Now does your work involve just work at the office
02:28:08 or do you go outside of the office as part of your duties?
02:28:11 **A.** Both. We go to, you know, places of death,
02:28:16 residences, roadsides, you know, basically wherever a death
02:28:21 occurs in Onondaga County we go to. We also will at the
02:28:26 request of surrounding county corners assist them with
02:28:30 their death investigations and go out to those scenes as
02:28:34 well.
02:28:34 **Q.** And Investigator Lisi, if I use the term a forensic
02:28:39 excavation, does that have particular meaning in your

02:28:41 field?

02:28:42 A. Yes, it does.

02:28:42 Q. And can you describe for the Court what that meaning 02:28:45 is?

02:28:45 A. A forensic excavation basically entails the 02:28:48 investigators and the medical examiners going to a 02:28:53 location, setting up a grid, and basically slowly, 02:28:59 meticulously removing layers of soil to possibly uncover, 02:29:05 you know, evidence of human remains.

02:29:07 Q. And could you please describe for the Court your 02:29:10 training or experience regarding forensic investigations?

02:29:14 A. Yes. Basically a lot of the training comes on the 02:29:20 job. It's by senior investigators at the office as well as 02:29:24 the medical examiners that give us that training and as far 02:29:29 as excavations or in death investigations.

02:29:33 Q. And as you sit here today, can you approximate for 02:29:37 the Court how many forensic investigations you have been a 02:29:40 part of or you've attended?

02:29:41 A. Forensic investigations --

02:29:45 Q. Forensic excavations, I apologize.

02:29:48 A. Excavations.

02:29:49 THE COURT: Hold on, hold on. The question is 02:29:51 how many forensic excavations?

02:29:53 MR. OAKES: Excavations, correct. If I 02:29:54 misspoke I apologize.

02:29:56 **A.** Five.

02:29:57 **Q.** And were you working on the day of July twenty-ninth of 2014?

02:30:04 **A.** Yes, I was.

02:30:06 **Q.** And were you working with anybody on that day?

02:30:08 **A.** Yes. I was working with five members of our office as well as members of the Sheriff's Department.

02:30:18 **Q.** And when you say --

02:30:20 **A.** Oswego County Sheriff's Department.

02:30:22 **Q.** Thank you. Which members of the Medical Examiner's Office?

02:30:23 **A.** There was our deputy chief medical examiner Laura Knight, there was our medical examiner Julia Shields, there was myself, and there was a resident from Upstate Hospital who was rotating through our office. There was a medical student from Upstate Hospital that was also there as well as a Medical Examiner's Office intern.

02:30:49 **Q.** And you said that you were assisting Oswego County Sheriff's Department on that day. At what location?

02:30:55 **A.** Rice Road location where the reported abandoned cabin had been located.

02:31:02 **Q.** And by way of background and foundation, why -- what was your understanding of why you were going to that location?

02:31:08 **A.** We were sent to that location based on a state --

02:31:12 New York State Trooper cadaver dog that hit on a location
02:31:16 there for possible human remains.

02:31:20 **Q.** So when you went to that location, did you go to a
02:31:23 particular area?

02:31:24 **A.** Yes. We were directed to a cabin site, you know,
02:31:30 approximately one to two-hundred yards from a residence on
02:31:33 Rice Road, and that had been the point where the cadaver
02:31:41 dog had hit, had been previously staked, and that's where
02:31:44 we were directed to.

02:31:46 **Q.** And Investigator Lisi, when you say cabin site, was
02:31:49 there a standing structure when you --

02:31:51 **A.** No, there was not.

02:31:52 **Q.** And generally could you describe for the Court the
02:31:55 area where generally where the search was being performed?

02:31:58 **A.** It was a heavily wooded area, and there, you know,
02:32:02 appeared to be debris possibly from the cabin that had
02:32:07 collapsed and, you know, a lot of the ground was overgrown
02:32:10 with vegetation and, you know, obviously there was trees,
02:32:15 you know, surrounding this area.

02:32:17 **Q.** Okay, and how did -- how did you make entry to that
02:32:21 point in the woods?

02:32:22 **A.** We were escorted on foot through various paths in
02:32:27 the woods.

02:32:28 **Q.** And at any point did you cross railroad tracks on
02:32:33 the way to get to that site?

02:32:34 A. No, I did not.

02:32:35 Q. Did you go through an open field to get to that site?

02:32:38 A. No, I did not.

02:32:40 Q. And you said you focussed initially on an area where the dog had indicated your -- your understanding was the day before?

02:32:46 A. Yes, that is correct.

02:32:48 Q. And was there a procedure set up to -- for an excavation of that area surrounding where the K-9 had hit?

02:32:56 A. Basically at that point once we saw the area we set up a stringed pattern around, centered around the point where the dog hit, and this area went from anywhere from ten feet to seven feet depending on the site of this area because of the vegetation as well as the trees and natural structures that were present.

02:33:28 Q. Investigator Lisi, I'm going to hand you what's been received as People's Exhibit 5. Do you recognize what's shown in that photograph?

02:33:41 A. Yes, I do.

02:33:42 Q. Could you please tell the Court?

02:33:43 A. This is the area on July twenty-ninth that we forensic excavated.

02:33:50 Q. And does that photograph fairly and accurately show the condition of the ground right after you staked it off?

02:33:58 A. Yes, it does.

02:33:59 Q. Okay. And so in looking at this photograph, and based upon your recollection, the area where that marker was that you first started digging, was that ground turned up or dug up?

02:34:13 A. It did not appear so.

02:34:16 Q. Can you please describe for the Court the methodology -- well, let me ask you who established the methodology for how the excavation would be conducted?

02:34:24 A. That was established by the deputy chief medical examiner Laura Knight who was present on the scene.

02:34:30 Q. And were her recommendations followed?

02:34:35 A. Yes, they were.

02:34:35 Q. Her methodology followed?

02:34:37 A. Yes, it was.

02:34:39 Q. And what was that methodology?

02:34:40 A. We decided that we were going to basically grid off that area into four quadrants, and the dirt from those four quadrants would then be moved to four separate stations that corresponded with the site of the quadrant, the dig, and that ground and soil and, you know, vegetation all would be sifted at this time by staff from the Medical Examiner's Office.

02:35:08 Q. Okay, and when you talk about the four separate stations and sifting, can you describe that process for the

02:35:13 Court?
02:35:13 **A.** Yep. The deputies would recover buckets of dirt
02:35:20 from the specific quadrant, bring it over to the sifting
02:35:24 station. At that point the medical examiner staff would
02:35:27 take possession of the bucket, pour it over our screen
02:35:32 sifters and we would meticulously go through the dirt,
02:35:36 pushing it through the sifters, looking for any signs of
02:35:39 evidence or remains or anything that might be present.
02:35:41 **Q.** And what is the significance of those sifters,
02:35:45 what's the reason for using the sifters?
02:35:47 **A.** The sifters are basically a twenty-four inch square
02:35:50 that has a quarter of an inch mesh screen and basically
02:35:56 that is to catch any -- the smallest possible human remains
02:36:00 or evidence that might be present.
02:36:02 **Q.** And have you used that type of sifter on other
02:36:05 excavations?
02:36:06 **A.** Yes, I have.
02:36:08 **Q.** And have you ever been personally present when
02:36:10 remains have been found, bone fragments or teeth or
02:36:15 anything like that?
02:36:15 **A.** No, I have not.
02:36:16 **Q.** Now you said the area was assigned into four
02:36:21 quadrants. Were each of those quadrants essentially
02:36:24 assigned to a sifting station?
02:36:27 **A.** Yes, they were.

02:36:28 **Q.** And that methodology was used -- well, how long did
02:36:33 the dig last for on July twenty-ninth?

02:36:35 **A.** It lasted all day. It started just before nine
02:36:38 o'clock in the morning and went till just before four
02:36:41 o'clock in the afternoon.

02:36:43 **Q.** And throughout that day was the methodology you
02:36:46 described used?

02:36:47 **A.** Yes, it was.

02:36:48 **Q.** And were you consistently or constantly present
02:36:52 throughout the day?

02:36:53 **A.** Yes, I was.

02:36:54 **Q.** Could you personally observe what the deputies were
02:36:58 doing in digging up that area?

02:36:59 **A.** Yes, I did.

02:37:01 **Q.** Do you have an opinion were they following the
02:37:03 methodology that was established by Dr. Knight?

02:37:05 **A.** Yes, they were.

02:37:06 **Q.** And you said you could see as they were digging.
02:37:12 Could you describe the terrain as they were digging?

02:37:16 MS. BIANCO: Objection to the "they." We
02:37:17 don't know how many, where.

02:37:19 THE COURT: Yes. Give me some -- I'm assuming
02:37:22 the deputies.

02:37:23 **Q.** The deputies were digging?

02:37:25 **A.** Yes.

02:37:26 MS. BIANCO: Well, how many deputies are we
02:37:28 talking about? Is there one? Is there ten?
02:37:30 THE COURT: Ask how many deputies.
02:37:31 **Q.** How many deputies approximately were there?
02:37:35 **A.** At least six to eight deputies.
02:37:38 **Q.** Okay, and the persons who were digging, the
02:37:40 deputies.
02:37:41 **A.** Yes.
02:37:41 **Q.** Could you see the terrain that they were digging in?
02:37:44 **A.** Yes.
02:37:44 **Q.** And how would you describe that terrain?
02:37:46 **A.** It was dirt, consisting of dirt, rock, tree roots.
02:37:53 **Q.** And I'd like to focus on the tree roots for a
02:37:57 moment. What kind of obstacle if any did the tree roots
02:38:01 pose in digging?
02:38:02 **A.** They -- we weren't able to properly dig in those
02:38:06 areas until we actually removed the tree roots.
02:38:09 **Q.** Would you say it was difficult to dig there because
02:38:11 of the tree roots?
02:38:12 **A.** Yes.
02:38:13 **Q.** And at the end of the day, do you know what the
02:38:21 depth was that was dug to you at that first site?
02:38:25 **A.** Twenty-nine inches.
02:38:27 **Q.** Who made the determination to dig to twenty-nine
02:38:29 inches or how was that established?

02:38:31 **A.** We dug to twenty-nine inches based on that at twenty-nine inches there was a hard packed level or layer of clay that was undisturbed across the -- across the entire area.

02:38:48 **Q.** And when you say undisturbed, can you describe that more what you mean by that?

02:38:53 **A.** Basically at twenty-nine inches, this layer of clay being directly, you know, over the entirety of the excavation site, did not show any signs that it was disturbed.

02:39:07 **Q.** And so based on that appearance, what conclusion did you draw?

02:39:10 **A.** That there was nothing further to be done by digging below this area at this point because this was basically a sterile grown that was untouched.

02:39:58 MR. OAKES: Your Honor, may I approach?

02:40:00 THE COURT: Absolutely.

02:40:00 **Q.** Investigator Lisi, I'm going to hand you what's been marked for -- I'm sorry, what's been received into evidence as People's Exhibit T, R, Q, P and EE. Can you take a look at those please?

02:40:43 (Whereupon, there was a pause in the proceeding.)

02:40:45 **Q.** And Investigator Lisi, I'm going to hand you Exhibit T to begin with. Can you tell the Court what's shown in

02:40:57 that photograph?
02:40:58 **A.** This is showing prior to any of our digging we have
02:41:02 placed the evidence marker showing the central point where
02:41:06 we were going to where the cadaver dog had hit on a
02:41:10 possible location. It's also showing our compass in front
02:41:14 of the evidence marker basically showing us that north,
02:41:17 where the north side of the excavation site was positioned.
02:41:23 **Q.** And I'm going to hand you what's been received
02:41:25 Exhibit R. What's shown in this photograph?
02:41:30 **A.** Again, this is the excavation area with the evidence
02:41:36 marker showing the point where the cadaver dog had shown
02:41:39 interest.
02:41:40 **Q.** And Investigator Lisi, for clarification on that
02:41:43 photograph, the red string isn't up yet, correct?
02:41:46 **A.** No, it is not.
02:41:48 **Q.** I'm next going to hand you what's been received as
02:41:52 Exhibit P and what's shown here?
02:41:55 **A.** We have started excavating the area at this point
02:42:01 and showing, you know, that some tree roots have already
02:42:05 been exposed and also some of the vegetation that's been
02:42:11 exposed as well.
02:42:12 **Q.** And last, EE, what's shown in that?
02:42:19 **A.** This is again showing the excavation area. This is
02:42:26 before we've gotten to the clay area so it's probably about
02:42:30 halfway into our excavation.

02:42:33 **Q.** And Investigator Lisi, some of the root structures that you have described.

02:42:38 **A.** Yes.

02:42:38 **Q.** Are those shown in this photograph?

02:42:41 **A.** Yes, they are.

02:42:42 **Q.** Actually I'm going to hold back on Exhibit Q.
02:42:56 Investigator Lisi, could you remind me please what time approximately did you stop digging on Tuesday, July twenty-ninth, 2014?

02:43:03 **A.** It was a little before four o'clock in the afternoon.

02:43:06 **Q.** Did you return the next day?

02:43:09 **A.** Yes, I did.

02:43:10 **Q.** What was happening the next day?

02:43:13 **A.** The next day we were going to finish sifting the area from the first day, and then we were also instructed to excavate the area underneath the footprint of what appeared to be a cabin.

02:43:30 **Q.** Okay, and I'd like to talk a little bit about that footprint or you said what appeared to be a cabin. What did you see at that location in that area?

02:43:39 **A.** There was various amounts of wood, debris and some household -- there was a household appliance, I believe there was a refrigerator, freezer, and just as well as some various household things.

02:43:59 **Q.** Were those items removed before the excavation could occur?

02:44:04 **A.** Yes, they were.

02:44:05 **Q.** And an excavation -- well, and on the second day what area was the excavation performed on?

02:44:12 **A.** It was finished on the area where the cadaver dog had hit, and then we moved to the area of the footprint of the -- what appeared to be possibly a cabin or something, structure.

02:44:25 **Q.** Okay, and for that structure, can you approximate for the Court roughly the dimensions of the footprint as you recall?

02:44:33 **A.** I would have to approximate it at roughly maybe about a ten by fifteen area.

02:44:41 **Q.** And that's your best recollection?

02:44:43 **A.** Yes.

02:44:44 **Q.** As you sit here today. What was the methodology used on the second day?

02:44:48 **A.** The same methodology that was used on the first day.

02:44:52 **Q.** Okay, and how long did the excavation occur on the second day?

02:44:58 **A.** It occurred on basically the same amount of time. We finished up shortly before four o'clock that day.

02:45:05 **Q.** And was anything of interest noted or detected during the second day?

02:45:10 A. There was not.

02:45:11 Q. And I'm not sure if I asked you that question regarding the first day. Was anything of interest noted on the first day on July twenty-ninth?

02:45:18 A. No, there was not.

02:45:19 Q. Okay. And on the second day, on the July thirtieth, approximately what depth was dug to?

02:45:26 A. We also dug to twenty-nine inches.

02:45:30 Q. Why did you -- why that depth?

02:45:32 A. Again, at twenty-nine inches we came across a hard pack layer of clay that appeared undisturbed across the entirety of that site as well.

02:45:43 Q. And generally what was the ground structure where you were digging on the second day?

02:45:50 A. It was similar to the first day. Again, vegetation, root structures and dirt.

02:45:58 Q. If you recall, were more than one shovel broken during the dig?

02:46:03 A. Yes, there was.

02:46:05 Q. And perhaps some other tools too?

02:46:08 A. Yes, there was.

02:46:09 Q. And Investigator Lisi, I'm going to hand you what's been received as People's Exhibit HH. Do you recognize what's shown in that photograph?

02:46:46 A. Yes. This is the area underneath the footprint of

02:46:52 the structure.

02:46:52 **Q.** And the area that was dug in, was that surrounded by
02:46:59 red string, that photograph?

02:47:01 **A.** Yes, it was.

02:47:02 **Q.** I'm going to hand you what's received as People's
02:47:04 FF. What's shown there?

02:47:05 **A.** This is again showing the string as well as the
02:47:09 twenty-nine inches with the tape measure, and again, this
02:47:12 is the footprint of the structure.

02:47:15 **Q.** Now, the edges of those two areas where you were
02:47:19 digging, did they line up? Were they immediately adjacent
02:47:22 to each other if you recall?

02:47:25 **A.** The -- I'm sorry, which two areas?

02:47:28 **Q.** I'm sorry. The area where you were digging on the
02:47:31 first day.

02:47:31 **A.** Okay.

02:47:32 **Q.** Focussed on where the dog had hit, and then on the
02:47:35 second day the footprint, how close in proximity were those
02:47:38 two areas?

02:47:39 **A.** They were adjacent to each other.

02:47:40 **Q.** Okay, and at the end of the first day when you dug
02:47:47 down, was the pit filled back in or was it left open?

02:47:50 **A.** On the first day it was left open.

02:47:52 **Q.** On the second day of the dig eventually were the two
02:47:56 pits joined into one big area?

02:47:58 A. Yes, they were.

02:47:59 Q. And what was the purpose of essentially connecting those two areas?

02:48:03 A. To show that the -- basically that at twenty-nine inches the hard pack clay went across the entirety of this area.

02:48:12 Q. Okay, I'm going to hand you what's been received as People's Exhibit JJ and what's shown in that photograph?

02:48:19 A. This is -- this is actually the area on the -- dug from the first day.

02:48:31 Q. Okay, is it just that or is it basically a connection of the two if you can see?

02:48:38 A. Yes. Actually it is a connection of the two because this was the tarp there from the second day.

02:48:44 Q. Okay.

02:49:07 THE COURT: Is that last Exhibit JJ?

02:49:10 MR. OAKES: It was JJ, Your Honor.

02:49:11 THE COURT: Thank you.

02:49:19 Q. Investigator Lisi, prior to this dig on July twenty-ninth and July thirtieth, had you ever responded to a location for a forensic excavation where a K-9 had been employed or used?

02:49:32 A. Yes, I have.

02:49:33 Q. How many occasions prior to this dig?

02:49:36 A. There were two separate occasions prior to that dig.

02:49:40 Q. And do you recall approximately when those were?

02:49:44 A. I believe they were in 2010.

02:49:48 Q. And do you generally remember the areas where those were?

02:49:51 A. Yes, I do.

02:49:52 Q. Where were they?

02:49:53 A. The first site was in the -- I believe it was in the Town of Scriba.

02:49:59 Q. Here in Oswego County?

02:50:00 A. In Oswego County, and the second area, I'm not sure if it was actually still in the town of -- in Scriba, but it was just up the road on 104.

02:50:10 Q. And on those prior occasions, you went because a K-9 had hit at those locations?

02:50:17 A. Yes.

02:50:17 Q. And on those two dates, did you or any members of the ME's Office find any human remains at those sites?

02:50:25 A. No, we did not.

02:50:34 MR. OAKES: No further questions, Your Honor.

02:50:36 THE COURT: Ms. Bianco.

02:50:37 MS. BIANCO: Thank you, Judge.

02:50:38 CROSS-EXAMINATION

02:50:39 BY MS. BIANCO:

02:50:40 Q. Investigator Lisi, when you went to the Rice Road area and reviewed the scene, did you also notice that there

02:51:09 was a creek running next to it?

02:51:11 **A.** I believe there was a creek, yes.

02:51:13 **Q.** Okay, and do you know whether or not that creek ever
02:51:20 overflowed the area where there was a dig in the past
02:51:23 twenty years? Do you know?

02:51:25 **A.** I do not know.

02:51:26 **Q.** Okay, would you agree that the terrain in that area
02:51:29 could change dramatically in the twenty-year period,
02:51:33 correct?

02:51:33 **A.** It's possible.

02:51:34 MR. OAKES: Objection. Objection as to
02:51:36 foundation. I don't think this witness is qualified as
02:51:39 a geologist to testify about terrain.

02:51:41 THE COURT: He answered of his own knowledge.
02:51:43 I'll allow it.

02:51:44 **Q.** Well, let's talk about your -- your actual training
02:51:48 in forensic excavations. Did you take specific classes on
02:51:52 forensic excavations?

02:51:54 **A.** No, I did not.

02:51:55 **Q.** Okay, so there's no particular certification for
02:51:59 forensic excavations, is that correct?

02:52:01 **A.** Correct.

02:52:02 **Q.** This was just on-the-job training?

02:52:05 **A.** Correct.

02:52:05 **Q.** Okay. In the two digs that you -- you talked about

02:52:10 that you did before which I believe you said were in
02:52:14 Scriba, is that right?

02:52:14 A. Correct.

02:52:15 Q. During those digs, did you take any forensic soil
02:52:20 samples?

02:52:20 A. No.

02:52:21 Q. Now, you said that in this particular area where the
02:52:27 dig was occurring there were a number of trees there that
02:52:32 were very difficult to cut through. Is that right?

02:52:33 A. Correct.

02:52:34 Q. Do you know how long those trees had been there?

02:52:38 A. No, I do not.

02:52:39 Q. So is it fair to say that you don't know if this
02:52:43 terrain with the trees would be similar twenty years ago as
02:52:46 it was the day you did the dig?

02:52:48 A. No, I do not.

02:52:49 Q. I believe you testified on direct examination that
02:52:56 when you did this dig you set up a grid and you slowly and
02:53:02 meticulously reviewed the layers of soil, is that right?

02:53:06 A. Yes.

02:53:06 Q. Well, the people who were actually doing the digging
02:53:10 were the sheriffs, correct?

02:53:11 A. Correct.

02:53:12 Q. Did anybody -- did you train the sheriffs as to how
02:53:14 to do the dig?

02:53:15 **A.** No, we did not.
02:53:16 **Q.** So they just went out there with shovels and started
02:53:19 digging, correct?
02:53:20 **A.** Yeah, under our supervision.
02:53:22 **Q.** And when they're digging, sometimes they're breaking
02:53:25 up the trees, correct?
02:53:26 **A.** Correct.
02:53:27 **Q.** Breaking their shovels in half.
02:53:29 **A.** Correct.
02:53:30 **Q.** So this isn't a dig where they're doing things
02:53:33 gently and picking up layer by layer meticulously, is that
02:53:37 right?
02:53:37 **A.** They were not doing layer -- we were doing layer by
02:53:40 layer with the shovels.
02:53:42 **Q.** Okay, but when they're digging, they're digging into
02:53:45 the ground, sometimes the shovel would break, correct?
02:53:48 **A.** Correct.
02:53:49 **Q.** Okay, and when you're digging layer by layer, how
02:53:52 many inches are you supposed to dig down at a time?
02:53:55 **A.** There's really no set, you know, inches.
02:54:00 **Q.** Okay, so some -- some -- you said there were between
02:54:02 six and eight sheriffs, correct?
02:54:04 **A.** Correct.
02:54:04 **Q.** So some of them could be digging down a foot with
02:54:07 their shovel, correct?

02:54:09 **A.** That's probably rather unlikely.

02:54:11 **Q.** Okay, do you know?

02:54:14 **A.** No. I'm just going based upon the size of the
02:54:16 shovel that most likely a foot would have been a tough dig
02:54:19 with that.

02:54:20 **Q.** Would you agree that some of the sheriffs might have
02:54:22 been digging a couple of inches and some of the sheriffs
02:54:25 might have been digging eight inches at a time?

02:54:27 **A.** It's possible.

02:54:27 **Q.** So this layer by layer dig, it -- it really wasn't
02:54:32 consistent between all the sheriffs doing the digging,
02:54:35 correct?

02:54:35 **A.** Correct.

02:54:35 **Q.** And would you agree it's very difficult to find
02:54:41 pieces of human remains after twenty years, would you agree
02:54:46 with that?

02:54:47 **A.** It's possible, but there should still be some
02:54:52 remnants behind.

02:54:52 **Q.** It depends on decomposition, correct?

02:54:55 **A.** Correct.

02:54:57 **Q.** So if the water from the creek had rolled over that
02:54:59 particular area, some of those remains might have been
02:55:02 pushed away, correct?

02:55:03 MR. OAKES: Objection, Your Honor. Calls for
02:55:05 a whole lot of speculation.

02:55:06 THE COURT: Sustained.

02:55:07 **Q.** The area where the dog hit in particular, did you
02:55:18 take a soil sample from that particular area to determine
02:55:22 if there were any indication that there were chemical
02:55:26 traces of human remains?

02:55:27 **A.** No, we did not.

02:55:37 MS. BIANCO: If I may have a moment, Your
02:55:39 Honor.

02:55:39 THE COURT: Sure.

02:55:40 (Whereupon, there was a pause in the
02:55:56 proceeding.)

02:55:56 **Q.** Would you agree that decomposition of remains could
02:56:04 cause, well, wind, water could cause remains to travel or
02:56:12 move in an area, would you agree with that?

02:56:14 **A.** Yes.

02:56:14 **Q.** Okay, so the remains could be on one spot but also
02:56:18 could be on several spots, correct?

02:56:19 **A.** Correct.

02:56:20 **Q.** Did you do any digging underneath the actual cabin
02:56:24 itself?

02:56:25 **A.** Yes.

02:56:26 **Q.** Okay, and in the actual cabin itself, did you pick
02:56:29 up all of the layers of the cabin?

02:56:31 **A.** Yes.

02:56:32 **Q.** Okay, and you dug to twenty-nine inches?

02:56:34 **A.** That is correct.

02:56:35 **Q.** Is it fair to say that there could have been human remains there at one point but they were removed before you got there?

02:56:42 MR. OAKES: Objection, speculation.

02:56:45 THE COURT: What's the basis for that?

02:56:47 MS. BIANCO: Well, does he know whether -- if human remains were at one point there and then moved, would you necessarily be able to find any evidence of them.

02:56:58 THE COURT: It that a general question or --

02:57:01 MS. BIANCO: General question.

02:57:01 THE COURT: Okay.

02:57:02 THE WITNESS: Most likely no.

02:57:04 MS. BIANCO: Thank you. No further questions.

02:57:07 THE COURT: Mr. Oakes?

MR. OAKES: Thank you.

02:57:13 REDIRECT EXAMINATION

02:57:14 BY MR. OAKES:

02:57:15 **Q.** Investigator Lisi, you said that Dr. Knight was there on the first day?

02:57:34 **A.** Correct.

02:57:35 **Q.** Tuesday, July twenty-ninth? She established the protocol, procedure for the dig?

02:57:39 **A.** Yes, she did.

02:57:40 Q. And was it consistent with other digs that had been performed?

02:57:44 A. Yes, they were.

02:57:45 Q. And counsel asked whether the sheriff's deputies were trained specifically how to do the dig. Were the deputies within the eyesight of Dr. Knight and the staff of the ME's Office?

02:58:01 MS. BIANCO: Objection to what Dr. Knight can see. How does this witness know?

02:58:05 THE COURT: I guess if you ask how close Dr. Knight was.

02:58:07 Q. How close was Dr. Knight to where this dig was occurring where the deputies were digging?

02:58:12 A. Within ten feet.

02:58:14 Q. And could you see what the deputies were doing?

02:58:16 A. Yes.

02:58:17 Q. And at any point did Dr. Knight tell them they were doing it wrong?

02:58:20 A. No.

02:58:21 Q. Did she instruct them to do it differently?

02:58:23 A. No.

02:58:23 Q. Did it conform with how the staff of the ME's office wanted it performed?

02:58:28 A. Yes.

02:58:30 Q. And staff from the Medical Examiner's Office were

02:58:37 there continuously on both days?

02:58:38 A. Yes.

02:58:38 Q. At all times digging was being done?

02:58:41 A. Yes.

02:58:42 Q. Now, counsel asked whether human bodies 02:58:48 disintegrate. They do decompose, correct?

02:58:50 A. Yes, they do.

02:58:51 MS. BIANCO: Objection to the leading nature 02:58:53 of all his questions Judge.

02:58:54 THE COURT: This sounds like foundational 02:58:56 question. I'm fine with it. Go ahead.

02:58:58 Q. What about bones, can you please describe again I 02:59:03 think counsel used the term disintegration. Could you 02:59:06 please describe how bones disintegrate or whether they 02:59:11 disintegrate?

02:59:11 A. They weather. Obviously the biggest part to human 02:59:16 remains and bones are animal activity, they break the bones 02:59:20 down. Basically they disintegrate over time.

02:59:23 Q. What about teeth?

02:59:26 A. Teeth --

02:59:29 MS. BIANCO: Objection to the foundation of 02:59:31 him being able to answer this question. We don't know 02:59:33 if he has any training about the disintegration of 02:59:37 teeth.

02:59:38 MR. OAKES: Counsel asked some questions

02:59:42 about bodies --
02:59:42 MS. BIANCO: Bodies, not teeth.
02:59:42 MR. OAKES: Well, you asked about bodies.
02:59:43 Teeth are part of bodies last time I knew.
02:59:45 **Q.** What about teeth?
02:59:46 THE COURT: I'll allow it.
02:59:47 **A.** Teeth degrade a lot slower process than bone
02:59:51 structure.
02:59:52 **Q.** Would you expect -- again, would teeth completely
02:59:55 disintegrate after a twenty-year period?
02:59:58 MS. BIANCO: Objection. He's still leading
02:59:59 the witness, Judge.
03:00:00 THE COURT: It's a leading question.
03:00:01 Sustained.
03:00:01 **Q.** What condition would teeth be in after twenty years?
03:00:05 **A.** I would expect to find them.
03:00:07 **Q.** And is that the purpose of doing the sifting?
03:00:13 **A.** Yes.
03:00:13 **Q.** And again, following along counsel's questions about
03:00:19 disintegration, would that disintegration, what role does
03:00:24 that play in using the screens or the size of the screens
03:00:27 that the ME's office uses?
03:00:28 **A.** That they're basically it's small enough to catch,
03:00:32 you know, portions of teeth or small portions of bone.
03:00:35 **Q.** And what -- what type of bone or teeth did you see

03:00:40 on July twenty-ninth or July thirtieth?

03:00:42 **A.** I didn't see any.

03:00:45 MR. OAKES: Thank you, investigator.

03:00:46 THE COURT: Ms. Bianco

03:00:48 MS. BIANCO: Yes, please, Judge.

03:00:57 RECROSS-EXAMINATION

03:00:58 BY MS. BIANCO:

03:01:03 **Q.** The methodology you were using on the forensic 03:01:28 investigation on the day of the dig we're talking about 03:01:32 today, was that the same forensic methodology you used on 03:01:36 the prior two digs?

03:01:38 **A.** Yes.

03:01:39 **Q.** And you have never been successful on your digs in 03:01:43 finding human remains, correct?

03:01:45 **A.** Correct.

03:01:45 MR. OAKES: Objection.

03:01:45 **Q.** Have you ever found a tooth?

03:01:50 **A.** No.

03:01:50 **Q.** Are you familiar with the decomposition of teeth in 03:01:59 the human body?

03:02:01 **A.** Familiar as how?

03:02:02 **Q.** How they break down, what the chemical components 03:02:05 are, are you familiar with that?

03:02:06 **A.** No, I am not.

03:02:07 **Q.** Are you familiar with the decomposition of chemicals

03:02:10 that make up the human body?

03:02:12 **A.** Yes.

03:02:12 **Q.** Okay, what chemicals -- how does the human body
03:02:16 decompose? What chemicals?

03:02:18 **A.** The actual chemicals I -- I am not sure.

03:02:22 MS. BIANCO: No further questions.

03:02:25 THE COURT: Mr. Oakes, are you done?

03:02:27 MR. OAKES: We are. We're all set, Your
03:02:29 Honor. Thank you.

03:02:29 THE COURT: You're all set, sir.

03:02:31 THE WITNESS: Thank you.

03:02:31 THE COURT: Next witness. Who is your next
03:02:38 witness?

03:02:40 MR. OAKES: Jim Pietroski.

03:03:04 THE CLERK: Raise your right hand, left on the
03:03:11 Bible.

03:03:12 JAMES PIETROSKI, Called as a witness, having
03:03:13 been duly sworn, was examined and testified as follows:

03:03:13 THE CLERK: Please state your name for the
03:03:20 record.

03:03:20 THE WITNESS: James Pietroski.

03:03:21 THE CLERK: Spell your last name.

03:03:22 THE WITNESS: P-I-E-T-R-O-S-K-I.

03:03:25 THE CLERK: Have a seat please.

03:03:27 THE COURT: Mr. Pietroski, before you start

03:03:29 answering questions from Mr. Oakes, I'm going to ask
03:03:31 you whether or not you consent to have your testimony
03:03:33 audio and videotaped.

03:03:34 THE WITNESS: No, sir.

03:03:35 THE COURT: Thank you. Mr. Oakes.

03:03:39 DIRECT EXAMINATION

03:03:39 BY MR. OAKES:

03:03:40 **Q.** Good afternoon, investigator.

03:03:41 **A.** Good afternoon.

03:03:42 **Q.** Where are you employed?

03:03:44 **A.** Oswego County Sheriff's Office.

03:03:46 **Q.** In what position?

03:03:48 **A.** Criminal investigator.

03:03:50 **Q.** How long have you been in that position?

03:03:51 **A.** Six years.

03:03:52 **Q.** Investigator Pietroski, are you familiar with a
03:03:59 person by the name of William Pierce?

03:04:00 **A.** Yes.

03:04:01 **Q.** And how are you familiar with Mr. Pierce?

03:04:03 **A.** I took a statement from him back in July of 2014.

03:04:08 **Q.** And could you please describe for the Court the
03:04:11 circumstances under which you came to speak with Mr.
03:04:13 Pierce?

03:04:13 **A.** He phoned in a tip regarding the Heidi Allen
03:04:17 disappearance.

03:04:18 **Q.** Did you receive that tip yourself personally or did somebody else?

03:04:22 **A.** From somebody else.

03:04:23 **Q.** Was it passed along to you?

03:04:25 **A.** Correct.

03:04:25 **Q.** And based on that tip and receiving that tip, what did you do?

03:04:29 **A.** I telephoned Mr. Pierce.

03:04:31 **Q.** What happened?

03:04:33 **A.** We arranged for him to come in and meet with me at the Sheriff's Office.

03:04:38 **Q.** And what was the purpose of doing that?

03:04:40 **A.** He said he had some information about the Heidi Allen case so he was coming in so I could interview him and take a statement from him.

03:04:48 **Q.** And I'm going to direct your attention to July twenty-fifth, 2014. Were you working on that day?

03:04:54 **A.** Yes.

03:04:55 **Q.** And did you have contact with Mr. Pierce on that day?

03:04:57 **A.** Correct, yes.

03:05:00 **Q.** Where did that -- where did you initially meet Mr. Pierce, first make contact with him?

03:05:18 **A.** It was in the lobby of the Oswego County Public Safety Center.

03:05:21 **Q.** And did you guys stay in the lobby or move to
03:05:23 another location?

03:05:23 **A.** We moved back to the criminal investigation room.

03:05:26 **Q.** And ballpark, approximately how long did you speak
03:05:32 with Mr. Pierce?

03:05:33 **A.** Approximately an hour and a half to -- hour and a
03:05:39 half probably.

03:05:39 **Q.** Can you generally describe to the Court what it was
03:05:41 Mr. Pierce was telling you at this time?

03:05:43 **A.** He was describing --

03:05:45 MS. PEEBLES: Judge, objection. Hearsay.

03:05:48 MR. OAKES: Your Honor, this is being offered
03:05:50 as rebuttal to testimony offered by the defense of Mr.
03:05:53 Pierce.

03:05:53 MS. PEEBLES: He can't offer hearsay
03:05:55 testimony.

03:05:55 THE COURT: I'll sustain it.

03:05:57 **Q.** Investigator, did you take a statement from Mr.
03:06:02 Pierce at that time?

03:06:03 **A.** Yes.

03:06:04 **Q.** And who prepared that statement?

03:06:07 **A.** I did.

03:06:08 **Q.** And could you please explain to the Court where the
03:06:12 information from that statement came from?

03:06:14 **A.** Mr. Pierce.

03:06:15 **Q.** And after you finished typing it, what did you do with that statement?

03:06:20 **A.** I gave it to Mr. Pierce to read over.

03:06:22 **Q.** Before doing so, did you ask him if he read or wrote English?

03:06:28 **A.** Yes.

03:06:29 **Q.** What did he say?

03:06:30 MS. PEEBLES: Judge, again, leading.

03:06:33 THE COURT: You need to ask in a non-leading fashion.

03:06:36 MS. PEEBLES: Just ask him what he did.

03:06:40 MR. OAKES: Thank you for the tip, Ms. Peebles.

03:06:43 **Q.** What did you ask him about whether he read or wrote English?

03:06:47 **A.** I asked him if he could read or write English and I had him start reading the first line of the statement.

03:06:52 **Q.** Was he able to do so?

03:06:54 **A.** Yes.

03:06:55 **Q.** How long did he review the statement for?

03:07:01 **A.** Five minutes.

03:07:02 **Q.** Okay, what if any corrections did he ask to make to it?

03:07:07 **A.** I don't believe there was any corrections.

03:07:11 **Q.** I'm going to hand you what's been marked for

03:07:13 identification as People's Exhibit XX. Do you recognize
03:07:18 that, Investigator Pietroski?

03:07:20 **A.** Yes.

03:07:20 **Q.** What is that?

03:07:21 **A.** That's the written statement I obtained from Mr.
03:07:24 Pierce.

03:07:24 **Q.** Okay, and how do you recognize that?

03:07:28 **A.** 'Cause it has my signature on it.

03:07:33 **Q.** Okay, and is that identical to the original?

03:07:37 **A.** Yes.

03:07:38 **Q.** And with the exception of the exhibit sticker?

03:07:42 **A.** Yes.

03:07:43 **Q.** Okay, and is that a fair and accurate copy of the
03:07:48 statement given by Mr. Pierce?

03:07:50 **A.** Yes.

03:07:50 MR. OAKES: Your Honor, at this time the
03:07:52 People would offer Exhibit XX.

03:07:54 MS. PEEBLES: Objection. It's hearsay and
03:07:56 it's inadmissible.

03:07:58 THE COURT: How are you getting around the
03:08:00 hearsay?

03:08:01 MR. OAKES: Well, Your Honor, we're offering
03:08:02 it to show that a defense witness previously gave a
03:08:05 sworn statement at another date that's directly
03:08:08 contradictory to the testimony that he's given.

03:08:11 MS. PEEBLES: First of all, that's not
03:08:13 correct, it's not contradictory to the testimony that
03:08:15 he gave, and he could have questioned Mr. Pierce about
03:08:17 his sworn statement when he was up on the stand
03:08:19 testifying, so through this witness it's completely
03:08:21 inappropriate.

03:08:22 MR. OAKES: Well, Your Honor --

03:08:23 MS. PEEBLES: And it's hearsay and I would
03:08:25 object.

03:08:25 THE COURT: It is hearsay. How are you going
03:08:28 to get past the hearsay exception?

03:08:31 MR. OAKES: Your Honor, we're not offering it
03:08:32 for the truth of the matter asserted, we're not
03:08:34 offering it to show the truth of what Mr. Pierce said,
03:08:36 simply and solely that he said something differently
03:08:39 than what he said to this court when he testified.
03:08:42 Your Honor, Mr. Pierce testified that he recognized
03:08:48 James Steen as the person at the D & W parking lot on
03:08:51 that day. He was shown a photograph that either was
03:08:54 shown to him or he saw from a paper of James Steen in a
03:08:58 jail outfit, and he testified that he was positive it
03:09:01 was James Steen he saw. When he spoke with this
03:09:03 investigator on July twenty-fifth in that sworn
03:09:05 statement, he had indicated it was Gary Thibodeau that
03:09:08 he saw at the D & W parking lot. It is absolutely

03:09:11 material, and again, we're not offering it to show --

03:09:14 THE COURT: Just because it's material doesn't
03:09:16 mean you can bypass a rule of evidence.

03:09:18 MR. OAKES: Right. We are not offering it to
03:09:20 show that it was in fact Gary Thibodeau. That would be
03:09:22 for the truth. We're offering it to show that Mr.
03:09:26 Pierce recently, and again within the year, gave a
03:09:30 sworn statement that's directly contradictory to his
03:09:32 testimony.

03:09:33 MS. PEEBLES: It's hearsay and it's
03:09:34 inappropriate what he's doing. Mr. Pierce testified,
03:09:38 he questioned him, he questioned him about the
03:09:41 identification of James Steen, he admitted he didn't
03:09:44 recognize Mr. Steen in the photo array. I would
03:09:47 object. It's -- it's hearsay and it's inadmissible and
03:09:51 it's improper to introduce it through this witness.

03:09:53 THE COURT: I'm going to keep it out.

03:09:57 **Q.** After July twenty-fifth of 2014 when Mr. Pierce gave
03:10:24 you a sworn statement, did you speak with him again at some
03:10:28 other time?

03:10:28 **A.** Yes.

03:10:29 **Q.** When was that approximately?

03:10:31 **A.** It was July thirtieth via telephone.

03:10:34 **Q.** July thirtieth of 2014?

03:10:36 **A.** 2014, correct.

03:10:37 **Q.** Do you recall what was the purpose, who initiated
03:10:40 that phone call, Mr. Pierce or you?

03:10:42 **A.** I did.

03:10:43 **Q.** Why did you initiate that phone call?

03:10:45 **A.** Because he left a message on my answering machine so
03:10:49 I called him back.

03:10:50 **Q.** Okay, and when you called him back, what if anything
03:10:54 did he say to you?

03:10:56 **A.** That he was mistaken about his identification of the
03:11:01 individual in his statement on the twenty-fifth.

03:11:05 **Q.** Okay. And I won't ask you what he told you on July
03:11:12 thirtieth, but based upon what he told you, what did you
03:11:15 decide to do with Mr. Pierce? What investigative technique
03:11:19 did you decide to use?

03:11:21 **A.** I prepared a couple photo arrays to take to him so
03:11:25 he could view them.

03:11:26 **Q.** Okay, and you said a couple of photo arrays. Is
03:11:30 that two?

03:11:30 **A.** Two, yes.

03:11:31 **Q.** Why two?

03:11:32 **A.** Because there -- he's mentioning two different
03:11:35 subjects so I prepared two different photo arrays with each
03:11:38 subject in them.

03:11:39 **Q.** Okay, and who were those two different subjects?

03:11:41 **A.** Gary Thibodeau and James Steen.

03:11:43 Q. And when did he mention Gary Thibodeau?

03:11:46 A. In his original statement to me on the twenty-fifth of July, 2015, or 2014, sorry.

03:11:52 Q. And when did he mention James Steen?

03:11:55 A. July thirtieth, 2014 during that phone conversation.

03:11:59 Q. Do you recall when it was that you met with Mr. Pierce to show him those photo arrays?

03:12:05 A. It was October twenty-eighth, 2014.

03:12:08 THE COURT: What day?

03:12:09 THE WITNESS: October twenty-eighth.

03:12:11 Q. And where did you meet with him?

03:12:13 A. At his residence. Actually outside his residence in his driveway in my patrol car.

03:12:18 Q. And investigator, again, if you are talking October twenty-eighth, so a few months had passed by since you spoke with him. Why a few months?

03:12:27 A. Because I had to -- it was difficult to obtain a photo of Mr. Steen back around the time of 1994 so I finally located one and then put the photo array together.

03:12:39 Q. Well, what was the purpose or why was it important to find a picture of Mr. Steen around 1994, that era?

03:12:47 A. I wanted to get a photo that represented him approximately the time of 1994 which Mr. Pierce is saying he allegedly saw him.

03:12:57 Q. Okay, and you said the second photograph array was

03:13:05 included which other person? You said the first was James
03:13:09 Steen and the second one included who?

03:13:12 **A.** I believe the first one I showed him was of with
03:13:15 Gary Thibodeau and the second one I showed him was with
03:13:18 James Steen.

03:13:19 **Q.** Okay, I have the order backwards, I apologize. So
03:13:22 you met with him on October twenty-eighth, you showed him
03:13:25 two photo arrays?

03:13:26 **A.** Correct.

03:13:26 **Q.** And where were you when you showed him those?

03:13:29 **A.** We were sitting in my patrol car in his driveway on
03:13:33 Gray Road, Town of Oswego.

03:13:35 **Q.** Investigator, first going to hand you what's been
03:13:38 marked for -- actually what's been received as evidence as
03:13:43 Exhibit EEE. Do you recognize that?

03:13:46 **A.** Yes.

03:13:46 **Q.** What is that?

03:13:47 **A.** It's the photo array with Gary Thibodeau in it.

03:13:51 **Q.** Is that the photo array that you showed to Mr.
03:13:53 Pierce on October twenty-eighth of 2014?

03:13:55 **A.** Yes.

03:13:56 **Q.** And in showing that photo array to Mr. Pierce, was
03:14:01 he able to identify any of the people in that photo array?

03:14:04 **A.** No.

03:14:05 **Q.** When I say identify them, identify that person as

03:14:10 the person he claims he saw at the D & W store April third of 1994.

03:14:14 **A.** No.

03:14:14 **Q.** I'm handing you what's been received into evidence as Exhibit DDD. What is that?

03:14:23 **A.** It's another photo array.

03:14:27 **Q.** Is that the second photo array you showed Mr. Pierce?

03:14:29 **A.** Yes.

03:14:30 **Q.** And who does that contain? Whose photograph does that contain of significance?

03:14:34 **A.** James Steen.

03:14:35 **Q.** And was Mr. Pierce able to recognize any of those individuals, any of those six individuals in EEE as the person he claims he saw on April third of 1994 at the D & W store?

03:14:48 **A.** No.

03:14:48 **Q.** Investigator Pietroski, looking at Exhibit DDD, where does James Steen appear in this photograph, what number?

03:15:29 **A.** He's in position number three.

03:15:32 **Q.** Okay, and for that photograph that appears in position number three, do you know when that photograph was taken or where did you obtain it from?

03:15:41 **A.** We obtained it from our records file cabinet in one

03:15:46 of our storage rooms.
03:15:47 **Q.** Okay, and do you know approximately when that was
03:15:50 taken?
03:15:51 **A.** I believe it was July, 1988 or yeah, 1988, or I'm
03:15:57 sorry, it's December, yeah, December, 1988.
03:16:01 **Q.** And for Exhibit EEE, you said Richard, I'm sorry,
03:16:13 Gary Thibodeau appears in that photograph?
03:16:15 **A.** Yes.
03:16:16 **Q.** In what position number does he appear?
03:16:18 **A.** Number five.
03:16:19 **Q.** Okay. Now Investigator Pietroski, again looking at
03:16:26 Exhibit DD, I'm sorry, DDD, you said the photograph of
03:16:31 James Steen was from 1988?
03:16:33 **A.** Correct.
03:16:33 **Q.** And that's six years before the incident in
03:16:37 question. Why didn't you use a photograph closer to 1994?
03:16:42 **A.** 'Cause I couldn't find one.
03:16:45 **Q.** That's the closest available one you had?
03:16:47 **A.** Yes.
03:17:07 MR. OAKES: No further questions, Your Honor.
03:17:08 THE COURT: Ms. Peebles?
03:17:09 MS. PEEBLES: Yes.
03:17:11 CROSS-EXAMINATION
03:17:12 BY MS. PEEBLES:
03:17:13 **Q.** I'm going to hand you what's been marked as Defense

03:17:30 Exhibit DDD, and you just identified Mr. Steen as the third
03:17:35 person?

03:17:36 **A.** Um hum.

03:17:36 **Q.** Number three, and you would agree with me that he
03:17:40 doesn't have any facial hair on -- in that photograph?

03:17:45 **A.** Looks like he's got a faint mustache.

03:17:48 **Q.** Any kind of a beard?

03:17:50 **A.** No.

03:17:50 **Q.** In fact, is it fair to say he almost has what
03:17:53 appears to be a baby face in that photograph?

03:17:55 **A.** Yes.

03:17:55 MR. OAKES: Objection as to characterization,
03:17:57 Your Honor.

03:17:57 THE COURT: I think I have an idea of what a
03:18:00 baby face is. I'll allow it.

03:18:01 **Q.** Yes?

03:18:02 **A.** Yes.

03:18:02 **Q.** And did it ever occur to you to try to get a
03:18:07 photograph of Mr. Steen in 1994 from any of his family
03:18:10 members?

03:18:13 **A.** Yes.

03:18:14 **Q.** Did you talk to any of his family members?

03:18:16 **A.** No.

03:18:16 **Q.** So you didn't ask any of his family members whether
03:18:20 or not there was a photograph of him depicting him in 1994?

03:18:23 A. No.

03:18:23 Q. In fact, is it fair to say that that photograph number three depicting Mr. Steen and the array there doesn't look anything like him today?

03:18:37 A. Correct.

03:18:39 Q. Take that back.

03:18:48 MS. PEEBLES: No further questions.

03:18:50 THE COURT: Sir, I'm sorry, Mr. Oakes?

03:18:57 REDIRECT EXAMINATION

03:18:58 BY MR. OAKES:

03:18:58 Q. The photograph of Mr. Steen on DDD, where did you obtain that from?

03:19:06 A. From our files from a -- it's a file cabinet with a bunch of photographs in it.

03:19:12 Q. The photographs of the other five men who appear in DDD, where did those photographs come from?

03:19:20 A. Same location.

03:19:21 Q. And for the six photographs that appear in EEE, where do those come from?

03:19:27 A. The same location.

03:19:28 Q. Investigator Pietroski, does the term suggestibility have meaning when you're doing a photo array?

03:19:38 A. Yes.

03:19:39 MS. PEEBLES: Objection. Beyond the scope.

03:19:40 MR. OAKES: It does relate, Your Honor.

03:19:42 THE COURT: How?

03:19:43 MR. OAKES: Well, counsel's asking why he didn't use a picture from a family photo. Again, it would not be the same as a booking photo and it would stand out like a sore thumb when you put it in a photo array.

03:19:54 THE COURT: If he can testify to that I'll allow it based on the question, the family question.

03:19:59 **Q.** Based upon the question from counsel, you said you didn't obtain a photograph from family members. Why not use a family photo as opposed to booking photo?

03:20:09 **A.** Because I want to compare similar photos.

03:20:12 **Q.** Why's that important?

03:20:13 **A.** So one does not stick out. So he doesn't pick out one other than the other because it sticks out because it's different from the other -- other five.

03:20:22 **Q.** So is it fair to say that you want all the photographs to be of a similar nature, color, era?

03:20:30 MS. PEEBLES: Objection, leading.

03:20:31 THE COURT: Sustained.

03:20:31 **Q.** What's the significance of having photographs from the same era or time frame?

03:20:35 **A.** So they will look the same. They're in black and white, color, I want them to be the same.

03:20:46 MR. OAKES: No further questions, Your Honor.

03:20:47 MS. PEEBLES: Just one or two.

03:20:48 THE COURT: Let me finish writing.

(Whereupon, there was a pause in the proceeding). 03:21:09

03:21:09 THE COURT: Ms. Peebles, go ahead. Thank you.

RECROSS-EXAMINATION

03:21:11 BY MS. PEEBLES:

03:21:11 **Q.** So is it your testimony that had you not had a 03:21:14 booking photo of Mr. Steen, you wouldn't have been able to 03:21:18 put him in a photo array in order to show Mr. Pierce?

03:21:23 **A.** I would have had to get other similar photos 03:21:26 depicting other people.

03:21:27 **Q.** And --

03:21:28 **A.** With similar characteristics.

03:21:30 **Q.** And where do you think you would have found one if 03:21:33 he hadn't been arrested in 1988?

03:21:36 **A.** Of Mr. Steen?

03:21:37 **Q.** Yes, correct.

03:21:41 **A.** I would have looked for booking photos.

03:21:43 **Q.** Okay, my -- my question is had he not ever been 03:21:46 arrested --

03:21:48 **A.** Um hum.

03:21:48 **Q.** -- where would you have gotten a photograph for 03:21:50 purposes of showing Mr. Pierce?

03:21:52 **A.** I probably wouldn't have gotten a photograph.

03:21:55 MS. PEEBLES: No further questions.

03:22:00 THE COURT: Mr. Oakes, you set?

03:22:01 MR. OAKES: All set, Your Honor.

03:22:02 THE COURT: Mr. Pietroski, you can step down
03:22:04 please. Who is your next witness?

03:22:06 MR. OAKES: It's going to be Investigator Dale
03:22:08 MacDonald, Your Honor.

03:22:09 THE COURT: How long?

03:22:12 MR. MOODY: I don't think he'll be that long.
03:22:15 He basically as I mentioned yesterday --

03:22:17 THE COURT: I don't care -- I don't care if he
03:22:19 goes until four, but is he going to be able to be
03:22:22 cross-examined before four because we're going to have
03:22:24 a week break.

03:22:25 MR. MOODY: Yes, he's -- basically as I
03:22:27 mentioned the other day, he's an evidence technician.
03:22:29 What I had him do is in order to -- to verify the green
03:22:32 marks that are on the original Sheriff's Department
03:22:34 file, I had him make color copies and then seal them up
03:22:37 in bags. I don't -- I think we'd be able to be done by
03:22:41 four but I can't -- I can't --

03:22:42 THE COURT: Ms. Peebles, do you want to
03:22:43 risk -- it's up to you.

03:22:45 MS. PEEBLES: I would rather not risk it
03:22:47 because I don't think we've moved along that quickly.

03:22:50 and if we're going to get into this green marker issue,
03:22:53 I think it may take longer than a half hour.

03:22:55 THE COURT: It's unfair to the defense if
03:22:57 she -- if the defense can't finish her cross.

03:22:59 MR. MOODY: I don't believe he's going
03:23:00 anywhere the week of April seventh so I think we're
03:23:03 fine.

03:23:03 THE COURT: It has been confirmed we can start
03:23:05 at 8:45 on the seventh, okay, so we're adjourned until
03:23:11 8:45 on April seventh.

(Conclusion of Proceeding).

* * *

CERTIFICATE

I, JENNIFER ADYDAN, an Official Court Reporter in and for the State of New York, Fifth Judicial District, do hereby certify that the foregoing is a true, complete and accurate transcript of my stenographic notes taken in the above-entitled matter and the whole thereof to the best of my ability.

Jennifer Adydan

Jennifer Adydan
Official Court Reporter

DATED: April 1, 2015

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF OSWEGO: CRIMINAL TERM:

---------------------------------------x

THE PEOPLE OF THE STATE OF NEW YORK

Indict. No.
94C-0161

- against-

HEARING
VOLUME 13

GARY THIBODEAU,

Defendant.

---------------------------------------x

Oswego County Courthouse
25 E. Oneida Street
Oswego, NY 13126

DATE: April 7, 2015

Before:

HONORABLE DANIEL R. KING
Acting County Court Judge

Appearances:

GREGORY S. OAKES, ESQ.
District Attorney, Oswego County
MARK M. MOODY, ESQ.
Chief Assistant District Attorney

OFFICE OF THE FEDERAL PUBLIC DEFENDER
BY: LISA PEEBLES, ESQ., Public Defender
RANDI JUDA BIANCO, ESQ., Assistant Public Defender
Attorneys for Defendant

Defendant is not present

08:18:48

08:18:48

INDEX TO WITNESSES

	Direct	Cross	Redirect	Recross
FOR THE PEOPLE:				
Roberta Wills	2233	2236	--	--
Nicholas Kleist	2240	2252	2271	--
Herbert Yerdon	2273	--	--	--
Dale MacDonald	2289	2305	2325	--
Lance Mason	2329	2332	2334	--
Jeremy Powers	2336	2345	2354	2356
Nicole Powers	2358	2367	--	--
Darron Vecchio	2369	2379	2382	--
FOR THE DEFENDANT:				
Robert Moskal	2416	--	--	--

INDEX TO EXHIBITS

		Identification	Evidence
FOR THE PEOPLE:			
F.	Report	97	2301
OO.	Lead sheet	935	2300
IIII.	Lead sheet	2298	2300
JJJJ.	Lead sheet	2301	--
KKKK.	7/28/14 statement	2375	--
FOR THE DEFENDANT:			
163.	Log sheet	--	2307
165.	Inventory list	2049	2268
166.	Punch card	--	2318

167.	Punch card	2322	--
168.	Punch card	2322	--
169.	Punch card	2322	--
170.	Punch card	2322	--

09:18:50 THE COURT: You guys ready?

09:18:51 MS. PEEBLES: Yep.

09:18:52 THE COURT: Call your first witness.

09:18:54 MR. MOODY: People call Roberta Wills.
09:19:42 Judge, can we approach for one second?

09:19:44 THE COURT: Sure.

09:19:44 (Whereupon, there was an off the record
09:19:45 discussion at the bench).

09:20:04 THE CLERK: Raise your right hand, put your
09:20:06 left on the Bible.

09:20:08 ROBERTA WILLS, Called as a witness, having been
09:20:12 duly sworn, was examined and testified as follows:

09:20:12 THE CLERK: Please state your name for the
09:20:16 record.

09:20:16 THE WITNESS: Roberta Wills.

09:20:17 THE CLERK: Spell your first name.

09:20:18 THE WITNESS: R-O-B-E-R-T-A.

09:20:21 THE CLERK: And your last name.

09:20:22 THE WITNESS: W-I-L-L-S.

09:20:26 THE CLERK: Have a seat please.

09:20:27 THE COURT: Ms. Wills, before Mr. Moody
09:20:29 starts, I'm going to ask you whether or not you consent
09:20:30 to have your testimony video and audio taped.

09:20:34 THE WITNESS: No.

09:20:35 THE COURT: Thank you. Mr. Moody, your

09:20:40 witness.

09:20:40 MR. MOODY: Thank you.

09:20:42 DIRECT EXAMINATION

09:20:42 BY MR. MOODY:

09:20:43 **Q.** Ms. Wills, do you know somebody by the name of
09:20:45 Kristine Duell?

09:20:46 **A.** Yes.

09:20:46 **Q.** How do you know her?

09:20:47 **A.** She's my daughter.

09:20:48 **Q.** And I want to direct your attention to the early
09:20:51 part of say 1991 to 1994. Did you have some connection
09:20:57 with the D & W store?

09:20:58 **A.** Yes.

09:20:59 **Q.** Okay, what was that?

09:21:00 **A.** I was partial owner, co-owner.

09:21:04 MR. MOODY: Judge, I think I probably could
09:21:06 use the microphone.

09:21:07 THE COURT: Oh, yes.

09:21:38 (Whereupon, there was a pause in the
09:21:38 proceeding).

09:21:39 **Q.** You said you were a partial owner?

09:21:41 **A.** Yes.

09:21:41 **Q.** With whom?

09:21:41 **A.** Kristine, her husband, his father and mother and me
09:21:47 and my husband.

09:21:48 **Q.** Did you occasionally work there as well?

09:21:50 **A.** Yes, I did.

09:21:51 **Q.** And between 1991 and ninety-four, was there
09:21:55 particular hours or shift that you would work or time of
09:21:58 day?

09:21:58 **A.** I was mostly mornings.

09:22:00 **Q.** And when -- would you work there alone or with some
09:22:06 other people?

09:22:07 **A.** I worked alone. If I opened I worked alone.

09:22:10 **Q.** All right, I want to direct your attention to a time
09:22:13 period. Did you become aware at some point in time that
09:22:15 Kristine had found something in the parking lot that she
09:22:19 considered sensitive?

09:22:20 **A.** Yes, yes.

09:22:20 **Q.** Could you describe how that came about please
09:22:23 without getting into what she told you?

09:22:25 **A.** She just told me that morning --

09:22:28 MS. BIANCO: Objection, hearsay.

09:22:29 THE COURT: Sustained.

09:22:30 **Q.** At some point did you become aware that she had
09:22:32 found something?

09:22:33 **A.** Yes.

09:22:33 **Q.** Okay. Do you remember when she told you this, was
09:22:37 it in the morning or the afternoon or the evening?

09:22:39 **A.** It was in the morning when she talked to me.

09:22:41 **Q.** Okay, did she ever tell you what she had found?

09:22:46 **A.** Yes.

09:22:46 **Q.** Excuse me. Did she ever show you what she found?

09:22:49 **A.** No. I never seen it.

09:22:51 **Q.** Okay, and without getting into what she told you, did you have some kind of discussion with her about what should be done with it?

09:22:57 **A.** Yes.

09:22:58 **Q.** And do you know what she did?

09:23:00 **A.** Called the sheriffs.

09:23:02 **Q.** And at some point in time did somebody from the Sheriff's Department show up?

09:23:07 **A.** Apparently. I didn't --

09:23:10 MS. BIANCO: Objection to apparently. Either she knows or doesn't.

09:23:13 THE COURT: Does she have personal knowledge. Sustained.

09:23:16 **Q.** You say that she called the Sheriff's Department. What -- did you -- were you there when the Sheriff's Department showed up?

09:23:21 **A.** I don't know.

09:23:23 **Q.** All right, now, you mentioned that she never -- she never showed you what she had found?

09:23:27 **A.** No.

09:23:28 **Q.** And at some point in time did you -- did you ever

09:23:33 have a discussion with her about whether or not you should
09:23:35 talk to anyone about this?

09:23:36 **A.** No. Yes, we did.

09:23:37 **Q.** What did you -- did you ever tell anyone about this?

09:23:40 **A.** No.

09:23:40 **Q.** Okay. Now, you still were part owner of the store
09:23:45 when Heidi Allen disappeared, right?

09:23:47 **A.** Yes.

09:23:48 **Q.** After Heidi Allen disappeared, did you ever tell
09:23:51 anyone about that?

09:23:52 **A.** No.

09:24:05 MR. MOODY: I have no further questions,
09:24:07 Judge.

09:24:07 THE COURT: Ms. Bianco?

09:24:08 MS. BIANCO: Yes, please.

09:24:10 CROSS-EXAMINATION
09:24:11 BY MS. BIANCO:

09:24:12 **Q.** Good morning.

09:24:36 **A.** Good morning.

09:24:38 **Q.** Do you know the year that this information that
09:24:43 Kristine found in the parking lot, what year it was?

09:24:45 **A.** I couldn't remember. I can't remember.

09:24:48 **Q.** Do you know if it was -- what season it was, winter,
09:24:52 spring, summer, fall?

09:24:53 **A.** No.

09:24:54 **Q.** Do you know if she called -- if she turned that information over to the police the same day she spoke to you?

09:25:01 **A.** Yes.

09:25:02 **Q.** She did?

09:25:03 **A.** Yes.

09:25:03 **Q.** And you're certain of that.

09:25:05 **A.** Yes.

09:25:07 **Q.** And you worked at the D & W as well?

09:25:10 **A.** Yes.

09:25:10 **Q.** Were you aware of a person named Michael Bohrer?

09:25:14 **A.** No.

09:25:14 **Q.** Do you know how Michael Bohrer found the documents?

09:25:19 MR. MOODY: Object, Judge. She doesn't know who he is.

09:25:21 THE COURT: She doesn't know who he is and it's well beyond the scope.

09:25:28 **Q.** You said that Kristine found these -- these documents in the morning?

09:25:37 **A.** No. She told me in the morning.

09:25:40 **Q.** Okay, so you don't know when she actually found the documents.

09:25:43 **A.** She told -- I could say what she told me.

09:25:46 **Q.** No, I'm asking you --

09:25:47 **A.** No.

09:25:48 **Q.** Specifically.

09:25:48 **A.** I don't know exactly myself.

09:25:50 **Q.** And you don't know how long those documents were out
09:25:52 in the parking lot before she found them do you?

09:25:55 MR. MOODY: Objection, Judge. She doesn't
09:25:56 even know if they were in the parking lot.

09:25:58 THE COURT: Sustained.

09:26:00 **Q.** Well, were you working every morning -- well, strike
09:26:05 that. Were you working there in ninety-one?

09:26:08 **A.** Yes.

09:26:08 **Q.** Okay, did you work most mornings?

09:26:12 **A.** I had another job first till June.

09:26:20 **Q.** Did you go out in the parking lot regularly to sweep
09:26:23 up or things like that?

09:26:24 **A.** We would clean, yes.

09:26:26 **Q.** Was that daily, you personally?

09:26:28 **A.** No, not me personally.

09:26:35 MS. BIANCO: I have no further questions.

09:26:37 THE COURT: Give me a second, Mr. Moody,
09:26:39 please.

09:26:39 (Whereupon, there was a pause in the
proceeding.)

09:26:47 THE COURT: Mr. Moody, do you have any --

09:26:48 MR. MOODY: No redirect, Judge.

09:26:50 THE COURT: You can step down. Thank you.

09:26:51 THE WITNESS: Thank you.

09:26:52 THE COURT: Next witness.

09:26:53 MR. MOODY: People call Nicholas Kleist.

09:26:55 THE COURT: Nick Kleist?

09:26:57 MR. MOODY: Kleist.

09:27:54 THE COURT: Mr. Kleist here?

09:27:56 MR. MOODY: Yes, Judge.

09:28:08 THE CLERK: Raise your right hand, left on the
09:28:10 Bible.

09:28:12 NICHOLAS KLEIST, Called as a witness, having
09:28:18 been duly sworn, was examined and testified as follows:

09:28:18 THE CLERK: Please state your name for the
09:28:20 record.

09:28:20 THE WITNESS: Nicholas Kleist.

09:28:21 THE CLERK: Spell your last name.

09:28:23 THE WITNESS: K-L-E-I-S-T.

09:28:25 THE CLERK: Have a seat please.

09:28:27 THE COURT: Mr. Kleist, before Mr. Moody
09:28:28 starts asking you questions, I'm going to ask you
09:28:30 whether or not you consent to have your testimony audio
09:28:34 and videotaped.

09:28:35 THE WITNESS: I'd prefer not.

09:28:36 THE COURT: So you do not consent, right?

09:28:37 THE WITNESS: No.

09:28:38 THE COURT: Thank you.

09:28:41 DIRECT EXAMINATION

09:28:41 BY MR. MOODY:

09:28:43 **Q.** Are you employed, sir?

09:28:45 **A.** Yes, sir.

09:28:45 **Q.** By whom?

09:28:46 **A.** Syracuse Police Department.

09:28:48 **Q.** How long have you been with the Syracuse Police
09:28:50 Department?

09:28:50 **A.** Since November of 1995.

09:28:52 **Q.** And prior to November of 1995 where were you
09:28:57 employed?

09:28:57 **A.** Oswego County Sheriff's Department.

09:28:59 **Q.** How long were you with the Oswego County Sheriff's
09:29:02 Department?

09:29:02 **A.** A little bit over fourteen years.

09:29:04 **Q.** And what was the highest rank you achieved with the
09:29:07 Oswego County Sheriff's Department?

09:29:09 **A.** Criminal investigator.

09:29:10 **Q.** Were you a criminal investigator when -- when you
09:29:14 left in November of ninety-five?

09:29:16 **A.** Yes.

09:29:16 **Q.** In 1994 and 1995 did you have -- were -- what were
09:29:29 your responsibilities as a criminal investigator?

09:29:31 **A.** Mostly investigating felony cases. I was also a
09:29:37 crime scene specialist.

09:29:39 **Q.** Crime scene specialist meaning what?
09:29:46 **A.** I'd be called any type of crime scene, process the
09:29:51 scene for evidence.
09:29:51 **Q.** At some point in -- on Easter of ninety-four or
09:29:56 thereafter, did you become involved in the Heidi Allen
09:29:58 investigation?
09:29:59 **A.** Yes.
09:30:00 **Q.** And at some point in time prior to trial in 1995,
09:30:07 prior to Gary Thibodeau's trial, did you have
09:30:10 responsibility for going through some evidence and making
09:30:13 sure that it had been cataloged correctly?
09:30:16 **A.** Yes.
09:30:16 **Q.** Early on in the investigation, in 1994, where was
09:30:23 the headquarters for the investigation?
09:30:25 **A.** Well, we had the New Haven fire barn is where we
09:30:32 had -- basically everything was -- was set up in there as
09:30:34 far as the headquarters.
09:30:36 **Q.** Okay, and how long did that go on if you know?
09:30:42 **A.** Not sure exact. I mean it -- venture to say a
09:30:48 couple months or a month or two.
09:30:49 **Q.** Did you ever go out to the fire barn?
09:30:53 **A.** Yes.
09:30:53 **Q.** Were people, civilians I mean, bringing things to
09:30:57 the fire barn that they considered to be important?
09:30:59 **A.** Yes.

09:30:59 **Q.** Now, moving ahead to 1995 prior to trial, what
09:31:08 specifically were you doing with regard to this evidence
09:31:11 you were cataloging?

09:31:13 **A.** Well, we'd catalog everything and then put it into
09:31:18 evidence, mark it, and then we'd bring it to the DA's
09:31:22 Office.

09:31:22 **Q.** Okay, I want to show you what's been marked as
09:31:27 People's Exhibit B and ask you if you can take a look at
09:31:31 the items in that bag.

09:31:43 **A.** Can I take them out?

09:31:44 **Q.** Yes, if you could.

09:31:52 (Whereupon, there was a pause in the
09:32:23 proceeding.)

09:32:23 **A.** Okay.

09:32:23 **Q.** Do you recognize the items in there?

09:32:25 **A.** It's been a while, but yeah.

09:32:29 **Q.** Okay, and was this some of the items that you were
09:32:33 cataloging prior to trial?

09:32:34 **A.** I believe so.

09:32:35 **Q.** Okay. Now you mentioned that you would bring it to
09:32:38 the DA's Office. Why would you do that?

09:32:41 **A.** Everything that was figured as evidence had to be
09:32:46 brought to the DA's Office and turned over.

09:32:49 **Q.** Now, I want to show you what's been marked as
09:32:57 people's, or excuse me, Defendant's Exhibit 11-A and ask

09:33:02 you if you can look through the documents in that.

09:33:05 THE COURT: Is that Defendant's Exhibit 11-A?

09:33:08 MR. MOODY: Yes.

09:33:08 (Whereupon, there was a pause in the
09:33:21 proceeding.)

09:33:21 **A.** Yes. Appears to be copies of what was in this
09:33:25 evidence bag.

09:33:26 **Q.** Okay. Now there is a -- the second page of that
09:33:31 document, do you recognize specifically that document?

09:33:34 **A.** It's a report that I --

09:33:37 **Q.** Pardon?

09:33:38 **A.** It's a -- it's a report that I turned in, yes.

09:33:41 **Q.** I forgot to ask you this. You're currently with
09:33:43 the -- what's your current rank with the Syracuse Police
09:33:46 Department?

09:33:46 **A.** Sergeant.

09:33:47 **Q.** Sergeant, there is a -- you say you did that report?

09:33:50 **A.** Yes.

09:33:51 **Q.** Okay, and does that indicate anywhere on that report
09:33:56 when you were cataloging these items?

09:33:58 **A.** Yes.

09:33:59 **Q.** What date were you cataloging these items?

09:34:03 **A.** I believe that says May sixteenth. I can't read
09:34:08 the --

09:34:09 MS. BIANCO: I'm going to object. If he wants

09:34:10 to refresh the witness's recollection that's one thing
09:34:13 but reading from this --

09:34:14 MR. MOODY: It's already in evidence.

09:34:16 THE COURT: It's in evidence. I'll allow it.

09:34:18 **Q.** I'm sorry, I didn't catch all your answer.

09:34:20 THE COURT: What's your answer?

09:34:21 **A.** It appears to say May sixteenth, 1995 at 2:05 p.m.

09:34:26 **Q.** Okay, and you said that -- did you bring those items
09:34:31 to the District Attorney's Office?

09:34:32 **A.** Yeah, there's --

09:34:34 MS. BIANCO: Objection, leading.

09:34:35 THE COURT: I'll allow it.

09:34:36 **A.** There's a mark on there where it was stamped and
09:34:39 dated by the District Attorney's Office. That happens when
09:34:42 you turn the stuff in.

09:34:43 **Q.** Okay, and what's the date on that stamp?

09:34:46 **A.** May sixteenth, 1995.

09:34:49 **Q.** Did you -- you immediately brought these items then
09:34:54 after you discovered it, is that --

09:34:56 MS. BIANCO: Objection, leading.

09:34:58 THE COURT: Mr. Moody.

09:34:59 MR. MOODY: It is leading. I apologize,
09:35:01 Judge.

09:35:01 **Q.** When would you have brought these items after you --
09:35:03 after you had wrote that report?

09:35:06 **A.** Right after you would catalog them and bring them in, then we would have turned it over to the District Attorney's Office.

09:35:14 **Q.** Okay. After you did that with the report, would you -- would you have done anything else with that report and -- and the items?

09:35:21 **A.** As far as the report, the report would have been turned into the Sheriff's Office.

09:35:28 **Q.** Where would that have been?

09:35:30 **A.** Into the CID file. We had a -- we had a situation room also that was in there and everything was turned in to there and catalogued and --

09:35:39 **Q.** Okay, showing you now what's been marked and received as People's Exhibit LLL, if you could take a look at that, and I'll take back the -- so we don't get everything messed up.

09:35:52 THE COURT: Make sure whatever came out of the bags goes back.

09:35:55 MR. MOODY: Yes. Just had that same thought, Judge.

09:36:08 **Q.** You can take a look at LLL for me.

09:36:13 (Whereupon, there was a pause in the proceeding.)

09:36:24 **Q.** Do you recognize those documents?

09:36:26 **A.** Yes.

09:36:26 **Q.** What are those documents?

09:36:27 **A.** First page is a ledger that was kept in the evidence room. Second page is my report.

09:36:36 **Q.** Is that the same report that you saw in Exhibit 11-A?

09:36:40 **A.** Copy of it, yes.

09:36:43 **Q.** Okay.

09:36:44 **A.** Put the date stamp of when we turned it in, the date stamp of when we received it back, and there's a copy of the evidence tag.

09:36:53 **Q.** Okay, let's talk about the first page. You -- that's a ledger you called that?

09:36:58 **A.** Yes.

09:36:58 **Q.** Did you fill that document out?

09:37:00 **A.** Normally Investigator Whipple would turn that in. He's the one that kept the ledger and he's the one that was in charge of the evidence room.

09:37:10 **Q.** Okay, and then you said the second page is a copy of that report, is that correct?

09:37:16 **A.** Copy of my report, correct.

09:37:17 **Q.** And what -- does that have a date that that was stamped as received by the Sheriff's Department?

09:37:23 **A.** Received back in yes, May twenty-third, 1995.

09:37:26 **Q.** Okay, and is there some other additional writing on there that's not on 11-A? If you need to see 11-A I can

09:37:37 show it to you.

09:37:38 **A.** RE OSC evidence, R. Thibodeau, G. Thibodeau,
09:37:44 Investigator Kleist.

09:37:45 **Q.** Do you know whose handwriting that is?

09:37:46 **A.** No, I don't.

09:37:47 **Q.** And the date stamped then is the twenty-third with
09:37:52 the Sheriff's Department? Is that accurate did you say?

09:37:55 **A.** Correct. That's when we would receive it back and
09:37:58 put it in a normal case.

09:38:03 **Q.** And you said that the evidence tag is the third
09:38:05 page, a copy of the evidence tag?

09:38:06 **A.** Yes, sir.

09:38:07 **Q.** Did you fill that document out?

09:38:10 **A.** Yes.

09:38:10 **Q.** Does that appear to be the same evidence tag that is
09:38:18 found on exhibit -- People's Exhibit B?

09:38:22 **A.** Yes.

09:38:23 **Q.** Now, all of the items that are in 11-B, you bagged
09:39:00 them all together, is that my understanding?

09:39:02 **A.** Correct.

09:39:03 **Q.** Okay. Does that mean that they were all found in
09:39:06 the same location if you understand my question?

09:39:10 **A.** They were found in the same location inside a box.
09:39:13 That's about all that we knew at that time.

09:39:15 **Q.** And this box, do you know where that box had come

09:39:18 from?

09:39:19 **A.** Says bulk evidence storage. I believe that was in
09:39:22 one of the garages.

09:39:24 MS. BIANCO: I'm sorry. I didn't catch the
09:39:26 rest of --

09:39:26 THE COURT: In one of the garages I think is
09:39:28 what he said. Is that what you said, sir?

09:39:30 THE WITNESS: Yes.

09:39:48 THE COURT: Mr. Moody, I'm confused by that
09:39:51 question. In terms of timeline, can you give me a
09:39:54 timeline?

09:39:56 MR. MOODY: As far as --

09:39:57 THE COURT: You said that -- he said that he
09:39:59 found them in the same location. When?

09:40:02 **Q.** When would you have put all those items in that bag?

09:40:07 MS. PEEBLES: How about when did he put them
09:40:09 in the bag?

09:40:10 **Q.** Or when did you put them in the bag?

09:40:11 **A.** That would have been in -- when I put them in, that
09:40:14 was on May sixteenth.

09:40:15 **Q.** Okay.

09:40:17 MS. BIANCO: Judge, I think that's
09:40:19 non-responsive to your question which was where were
09:40:21 the items found. Were they found together.

09:40:23 THE COURT: My question is a timeline

09:40:26 question.

09:40:27 MR. MOODY: I was trying to get to that.

09:40:28 THE COURT: Okay.

09:40:28 **Q.** And you said you located these in the bulk evidence storage?

09:40:31 **A.** Right.

09:40:32 **Q.** Where would they have been before bulk evidence storage?

09:40:34 **A.** Probably out at the fire barn.

09:40:36 MS. BIANCO: Objection to probably. If he knows, fine. If he doesn't, he should be able to answer.

09:40:41 THE COURT: His knowledge. Rephrase the question.

09:40:44 **Q.** Do you know where they would have been before they were in bulk storage evidence?

09:40:47 **A.** The fire barn because that's mostly where everything was turned in.

09:40:51 MS. BIANCO: Objection to mostly where. That doesn't answer the question whether he knows specifically they came from the fire barn.

09:40:58 THE COURT: His initial statement acknowledged where they came from. He answered it.

09:41:22 **Q.** When you were going through the bulk evidence storage and -- and right prior to trial, were you doing

09:41:29 that alone?

09:41:30 **A.** No.

09:41:30 **Q.** Who else was with you?

09:41:33 **A.** Investigator Herbert Yerdon.

09:41:34 THE COURT: Investigator who?

09:41:35 THE WITNESS: Yerdon.

09:41:36 THE COURT: Thank you.

09:41:36 **Q.** Now finally, at some point in time to your knowledge
09:41:45 were -- was there a search warrant executed out at Kenyon
09:41:49 Road on Gary Thibodeau's property?

09:41:51 **A.** Yes.

09:41:51 **Q.** And were you present for that?

09:41:53 **A.** Yes.

09:41:53 **Q.** And what was your role if you remember?

09:41:55 **A.** I was photographing and collecting evidence.

09:41:59 **Q.** I want to show you what's been marked as People's
09:42:07 Exhibit I and ask you if you recognize that.

09:42:09 **A.** Yes.

09:42:10 **Q.** And what is that?

09:42:11 **A.** Cadillac belonging to Gary Thibodeau.

09:42:16 **Q.** Did you take that photo?

09:42:19 **A.** I'm not sure.

09:42:22 **Q.** Do you recognize what it depicts though from --
09:42:25 from --

09:42:26 **A.** Their -- their yard in front of the house, the

09:42:34 driveway.

09:42:34 **Q.** Are there other vehicles in there?

09:42:36 **A.** Camper and a blue van.

09:42:38 **Q.** Blue van. The photograph that I just showed you
09:43:16 which is Exhibit I -- well, actually let me get at it this
09:43:26 way. I withdraw that question. Do you remember
09:43:28 approximately when the search warrant was executed in Gary
09:43:31 Thibodeau's house?

09:43:33 **A.** Exact date, no. I believe it was sometime in July.

09:43:36 **Q.** Of --

09:43:37 **A.** Ninety-four.

09:43:38 **Q.** Ninety-four? Okay. And the Exhibit I, that
09:43:45 photograph, would that have been taken at the time, is that
09:43:48 your recollection from -- that's how it appeared during the
09:43:51 search warrant?

09:43:52 **A.** As far as I can recall.

09:43:53 MS. BIANCO: Objection as far as he can
09:43:55 recall. Either he knows or he doesn't.

09:43:57 THE WITNESS: It's been twenty years.

09:43:58 THE COURT: No, you can't respond. Ask him a
09:44:01 better question.

09:44:01 **Q.** Let me ask it to you this way. This -- this
09:44:07 photograph, was there anyone else taking photographs
09:44:10 from -- from on the search warrant at Gary Thibodeau's
09:44:14 house from the Sheriff's Department?

09:44:16 **A.** I believe so, yes.

09:44:18 **Q.** Okay, and that photograph to your recollection, is that how -- were those items there on the day of the search warrant?

09:44:29 **A.** Yes.

09:44:29 **Q.** Including the blue van that's shown in there?

09:44:40 **A.** Yes.

09:44:53 MR. MOODY: I have no further questions, Judge.

09:44:55 THE COURT: Ms. Bianco, Ms. Peebles? Ms. Bianco.

09:45:01 MS. BIANCO: I'm just going to need 11-A.

09:45:12 THE COURT: You also need a microphone.

09:45:15 MS. BIANCO: I think he put it on the shelf. And I also need eleven.

09:45:30 THE COURT: Okay.

09:45:37 CROSS-EXAMINATION

09:45:38 BY MS. BIANCO:

09:45:40 **Q.** Good morning. Is it Sheriff Kleist? You don't want to be called investigator, or excuse me, Sergeant Kleist, correct?

09:46:12 **A.** I have been called a lot of things. Sergeant Kleist or whatever you want, that's fine. Nick.

09:46:20 **Q.** I'll call you Sergeant Kleist then.

09:46:22 **A.** Beautiful.

09:46:23 **Q.** On direct examination you had -- had stated it's -- "it's been awhile" and "I think so" regarding People's Exhibit B.

09:46:34 **A.** What's People's Exhibit B?

09:46:35 **Q.** That's the -- Exhibit B was the one with the card and the documents contained in the card.

09:46:41 THE COURT: Show him Exhibit B.

09:46:44 MR. MOODY: Do you want to show it to him?

09:46:54 **Q.** I'll show you Exhibit B.

09:46:56 MS. BIANCO: May I approach, Your Honor?

09:46:57 THE COURT: Absolutely.

09:47:01 **A.** Okay.

09:47:02 **Q.** Is it fair to say that you don't have an independent recollection of all the events that -- that took place in 1994 in regards to this case?

09:47:18 MR. MOODY: I object to all the events. I mean are we going to narrow it to --

09:47:21 THE COURT: I'm confused because you seem to be talking about the items in that exhibit, then you just spread it way out.

09:47:27 MS. BIANCO: I'll talk about Exhibit B.

09:47:29 **Q.** Okay, Exhibit B, when you testified on direct, you said "it's been awhile, I think so." Is it fair to say that you don't have an independent recollection of the items contained in Exhibit B?

09:47:39 **A.** I can just go by what it says on the evidence card. That's what's on the evidence card, then that's everything that I put in there.

09:47:46 **Q.** Okay, but independently of the evidence card, you don't have an independent recollection of retrieving those documents do you?

09:47:55 MR. MOODY: Objection. Asked and answered, Judge.

09:47:57 THE COURT: Not really. I'll allow it. I'll allow it. Go ahead.

09:48:02 **A.** Every single item, no.

09:48:04 **Q.** Thank you. You testified on direct examination that there was a -- a situation room also contained at the Sheriff's Department, is that right?

09:48:13 **A.** Correct.

09:48:14 **Q.** And so the Sheriff's Department had their own situation room and the DA's Office had their own situation room, is that right?

09:48:22 MR. MOODY: I'm going to object to that. I don't believe he testified to that on direct, and I'm not sure the basis of knowledge of what the DA did or didn't do.

09:48:28 THE COURT: I'll sustain. I'll sustain.

09:48:29 **Q.** Do you know whether or not the District Attorney's Office had their own situation room?

09:48:34 **A.** No.

09:48:35 **Q.** But you only know about the Sheriff's Department situation room, is that correct?

09:48:42 **A.** Yes.

09:48:42 **Q.** And the situation room that was at the Sheriff's Department, was all the evidence kept together or was some logged on shelves?

09:48:54 **A.** In that room, some was on shelves and some other was in the actual evidence room.

09:49:03 **Q.** And I believe you testified on direct that you talked about something being found in a garage?

09:49:08 **A.** We had a bulk storage area, yes.

09:49:10 **Q.** So there would be three different places that the evidence was -- was kept at the Sheriff's Department, is that correct?

09:49:15 **A.** It was kept and locked, yes.

09:49:18 **Q.** So locked in the -- in a garage, correct?

09:49:21 **A.** Yes.

09:49:21 **Q.** Locked in a situation room, correct?

09:49:26 **A.** Yes.

09:49:26 **Q.** And locked on some shelves, correct?

09:49:29 **A.** Yes.

09:49:30 **Q.** Where were the shelves? What part of the Sheriff's Department were the shelves in?

09:49:38 MR. MOODY: Judge, I -- are we assuming

09:49:39 there's only one shelf or shelves in the Sheriff
09:49:43 Department?

09:49:43 THE COURT: If he knows, where were the
09:49:45 shelves located the evidence was stored on?

09:49:50 THE WITNESS: I believe mostly in the evidence
09:49:53 room.

09:49:53 **Q.** And where was -- the evidence room is different than
09:49:56 the situation room, is that correct?

09:49:57 **A.** Yes.

09:49:57 **Q.** Where was the situation room in the Sheriff's
09:50:02 Department?

09:50:02 **A.** It was one of the rooms that was in the hallway I
09:50:08 believe across from criminal investigations right by the
09:50:11 dispatch.

09:50:11 **Q.** And in terms of the garage, where was the garage
09:50:15 where the evidence was stored, the main storage, the
09:50:18 garage, where was that garage located?

09:50:21 **A.** That was down by the bay that's in the bottom of the
09:50:26 garage, the sheriff's area.

09:50:28 **Q.** So that would be a different floor from the criminal
09:50:30 investigation?

09:50:31 **A.** Yes.

09:50:31 **Q.** Now, you and Investigator Yerdon took inventory on
09:50:39 May sixteenth of 1995 and recovered the evidence contained
09:50:45 in Exhibit B, is that correct?

09:50:49 **A.** Yes.

09:50:49 **Q.** Okay, and that was -- you were directed to do that, look for the evidence?

09:50:56 **A.** Yes. Directed, yes.

09:51:01 **Q.** And who directed you?

09:51:02 **A.** I believe it was Lieutenant Goodsell.

09:51:06 **Q.** Now you found the evidence in Exhibit B which was the miscellaneous papers, photograph, the 1993 planner that was in the bulk evidence storage in the garage, correct?

09:51:20 **A.** Yes.

09:51:21 **Q.** Okay, and that was different from the shelves, correct?

09:51:30 MR. MOODY: Object, Judge. I think we've gone through this a couple times.

09:51:33 THE COURT: I'll allow the answer just so to be clear.

09:51:36 **Q.** Different from the shelves, correct?

09:51:42 **A.** Best as I can recall.

09:51:46 **Q.** Well, would something refresh your recollection? If I showed you Defendant's Exhibit 11, directing you to the bottom paragraph, if you can take a look at that to yourself.

09:52:05 **A.** Okay.

09:52:06 **Q.** That states it was found on shelf twenty doesn't it?

09:52:13 **A.** This says -- this is when it was returned to the

09:52:19 evidence room and logged in by Investigator Whipple and it
09:52:22 was stored, put on the shelf B-20.
09:52:25 **Q.** So it was taken from the garage but put back on the
09:52:30 shelf, correct?
09:52:31 **A.** No.
09:52:31 **Q.** You said it was logged back in?
09:52:33 **A.** Taken from the garage and then it was brought to the
09:52:35 DA's Office. Once it was released from the DA's Office on
09:52:38 the twenty-third, it was brought back and put into the
09:52:40 evidence room and put on that shelf.
09:52:42 **Q.** Okay. When you took it from the bulk storage from
09:52:55 the garage, how much material was in the bulk storage?
09:53:00 **A.** I have no idea. A lot.
09:53:02 **Q.** Well, can you approximate the number of boxes? Was
09:53:06 it more than ten?
09:53:07 **A.** I don't recall.
09:53:10 **Q.** How long did it take you to go through the bulk
09:53:13 storage that morning?
09:53:15 **A.** I don't recall.
09:53:17 **Q.** Now the things that were in the bulk storage, that
09:53:21 was not originally in the sheriff's investigative file in
09:53:28 the situation room, is that correct? You took it from the
09:53:31 bulk storage first?
09:53:34 **A.** It wasn't logged in as evidence at that point.
09:53:36 **Q.** Okay, it wouldn't have been logged in until May

09:53:41 sixteenth, 1994?

09:53:42 **A.** I believe that's what my report says, yes.

09:53:45 **Q.** And you personally gave it to Investigator Whipple
09:53:54 or did you give it directly to the District Attorney's
09:53:57 Office?

09:53:57 **A.** We brought it up to the District Attorney's Office
09:54:00 and that was as far as I know the last I saw of it.

09:54:03 **Q.** And who did you -- did you personally bring it up to
09:54:06 the District Attorney's Office?

09:54:08 **A.** I can't say yes or no. I believe so, yes. That's
09:54:13 the way it -- once you log it in, that was what you did.
09:54:18 Do I remember logging it? No.

09:54:21 **Q.** Do you know who you gave it to?

09:54:23 **A.** Absolutely not.

09:54:24 **Q.** Do you know what time it was turned in on May
09:54:29 sixteenth to the District Attorney's Office?

09:54:32 **A.** Should be time stamped on there.

09:54:35 **Q.** Well, would you like to take a look at Exhibit 11?

09:54:42 **A.** If it says the date and time.

09:54:45 **Q.** I'm asking you if it says the particular time.

09:54:50 **A.** No. This is just when it came back into the
09:54:53 evidence room here.

09:54:54 **Q.** And who -- when it came back to the evidence room,
09:54:58 did it come to you to put it back on the shelf?

09:55:01 **A.** No. It says here that it was logged in by

09:55:04 Investigator Whipple.

09:55:05 **Q.** Okay, but it was put back in the locked -- the locked shelf twenty, correct?

09:55:16 **A.** Says it was put back in shelf number twenty of the evidence room, B-20.

09:55:21 **Q.** And that would have been locked?

09:55:22 **A.** Absolutely.

09:55:23 **Q.** And that evidence room is only accessible by members of the Sheriff's Department?

09:55:28 **A.** Investigator Whipple and probably Lieutenant Goodsell. I don't know anybody else. It was not accessible by everyone.

09:55:39 **Q.** When you first retrieved the evidence from the garage, was it the policy of the Sheriff's Department to stamp in received by the Sheriff's Department immediately?

09:55:52 MR. MOODY: I'm going to object to policy, Judge. I don't believe we've established that -- that this --

09:55:57 THE COURT: It's a foundational question.

09:56:00 **Q.** Were you instructed as to how to handle the evidence in the Heidi Allen case by Investigator Whipple?

09:56:07 **A.** No.

09:56:08 **Q.** Did he provide you with any instruction that all of the evidence was to go directly to him first?

09:56:16 **A.** No, not that I remember.

09:56:19 **Q.** When it was stamped in on May twenty-third, 1995, you didn't stamp that in did you? You -- it wasn't your stamp.

09:56:34 **A.** No.

09:56:34 **Q.** The items contained in Exhibit B referred to Heidi Allen as a confidential informant didn't they?

09:56:48 MR. MOODY: I'm going to object, Judge.

09:56:49 THE COURT: What's your objection?

09:56:50 MR. MOODY: I don't -- I don't -- we're -- she's asking him if they refer to Heidi as a confidential informant. I don't think he has the documents in front of him to begin with, and I also think we're -- he's talking about what's beyond the scope of direct. He's talking about what he recovered and when he recovered it, not what the documents are.

09:57:06 THE COURT: I think it's a fine line. I'll allow the question.

09:57:12 **A.** Could you repeat that?

09:57:13 **Q.** I'm sorry, certainly. The items contained in Exhibit B include an index card about Heidi Allen, correct?

09:57:25 **A.** Correct.

09:57:25 **Q.** Okay, and it contained a photograph, right?

09:57:29 **A.** Yes.

09:57:29 **Q.** Paperwork with drug information, correct?

09:57:34 **A.** I believe so.

09:57:37 **Q.** They had -- and on the photograph on the back there are two thumbprints, correct?

09:57:46 MR. MOODY: Objection. On the back of the photograph?

09:57:49 **A.** I'd have to take a look.

09:57:50 **Q.** Okay, if you take a look at Exhibit B.

09:57:52 THE COURT: I'll sustain the objection. If you want to try to refresh his recollection that is fine.

09:57:58 MS. BIANCO: Certainly.

09:57:58 **Q.** Could you review Exhibit B and tell me if there were two thumbprints contained within Exhibit B?

09:58:04 **A.** Well, they look like thumbprints.

09:58:27 **Q.** Are you the person who actually took the thumbprints?

09:58:30 **A.** No.

09:58:31 **Q.** In regards to Exhibit B, looking at the items in that exhibit, there's no particular contact person from the -- as a member of the Sheriff's Department. In other words, there's nobody that you would call if items were -- were found, there's no name on the business card, is that right?

09:58:52 MR. MOODY: I'm going to object, Judge. I think the items for that respect speak for themselves.

09:58:56 MS. BIANCO: I'm asking a foundational

09:58:58 question.

09:58:59 THE COURT: How is that foundational question? 09:59:01 The foundational question regarding the thumbprint, 09:59:03 what are you trying to get to now?

09:59:05 MS. BIANCO: Well, I'm trying to find out 09:59:06 anything in that information as to who took what and 09:59:09 where. I think it's relevant. If there's nothing on 09:59:12 the card as to who it belonged to, who was the 09:59:15 investigator, he's not the investigator. I'm trying to 09:59:17 find out a little bit about this, Judge.

09:59:19 MR. MOODY: Well, I think Investigator 09:59:20 VanPatten or Chris VanPatten testified to this fairly 09:59:24 extensively. I mean --

09:59:26 THE COURT: I'm going to sustain the 09:59:28 objection.

09:59:29 **Q.** Well, you were the -- I believe you testified on 09:59:32 direct examination you were the crime scene specialist for 09:59:36 the Oswego County Sheriff's Department in 1994, is that 09:59:39 right?

09:59:39 **A.** Yes.

09:59:40 **Q.** I want to ask you some questions about the early 09:59:47 stages of the investigation. You were the one responsible 09:59:51 to try and lift latent prints from the scene of the Heidi 09:59:56 Allen abduction, is that right?

09:59:58 **A.** Yes.

09:59:58 **Q.** And you had the specialized training in regards to latent fingerprint gathering, correct?

10:00:06 **A.** Yes.

10:00:08 MR. MOODY: Judge, I'm going to object. How's this relevant to what we're here to discuss today?

10:00:12 THE COURT: I'm not sure. It's well beyond the scope. Please tell me how this is relevant.

10:00:16 MS. BIANCO: Well, Judge, during the testimony, during the trial testimony he was asked a series of questions about comparing the fingerprints that he lifted.

10:00:26 THE COURT: How's this relate to either new evidence or Brady?

10:00:29 MS. BIANCO: Well, the lack of the fact it's not in the transcript that the CI card came out at all. The comparison that was done with fingerprints to the scene was done from allegedly from things lifted from a notebook. The fact that he knew about this confidential informant card at the time of trial, that there were two fingerprints there, he knew of the fingerprints, and it wasn't compared or testified to that he saw that card.

10:00:57 THE COURT: How's that Brady or new evidence?

10:00:59 MS. BIANCO: Well, the fact that it's not there shows that it wasn't given.

10:01:02 THE COURT: You're trying to prove a negative
10:01:04 with a negative?

10:01:05 MS. BIANCO: No. I'm trying to prove a
10:01:06 negative, the fact that the card is not referenced or
10:01:10 talked about, those fingerprints, would prove the fact
10:01:13 that it was never turned over. Why else would -- would
10:01:16 this particular investigator who is the crime scene
10:01:18 specialist be testifying about comparing fingerprints
10:01:21 when there were fingerprints directly lifted by law
10:01:25 enforcement that he could have made the comparison to.
10:01:27 They brought out at trial that this was -- was their
10:01:31 comparison evidence to determine whether or not Heidi
10:01:34 Allen had touched certain objects. The fact that it
10:01:37 wasn't disclosed that they were -- these two
10:01:39 thumbprints that were compared, that shows that the
10:01:41 evidence was not given, that's the Brady material, and
10:01:45 he's the one who testified.

10:01:47 THE COURT: Do you wish to be heard, Mr.
10:01:49 Moody?

10:01:49 MR. MOODY: Well, Judge, first off I don't --
10:01:51 the leap she's making is that -- that the only two
10:01:53 fingerprints that Heidi Allen would have had would have
10:01:56 been the thumb -- the two prints that are on the back
10:01:59 of that card. Additionally, Judge, this is all in the
10:02:01 trial testimony. To that extent we've already had this

10:02:04 discussion two weeks ago about -- about you're going to
10:02:07 take notice of those -- those particular pages in the
10:02:10 trial transcript, and I don't know why we're going
10:02:12 through this again.

10:02:13 THE COURT: I'm going to sustain the
10:02:14 objection.

10:02:15 MS. BIANCO: Judge, just for the record --

10:02:16 THE COURT: Sure.

10:02:16 MS. BIANCO: -- I don't think it's exactly a
10:02:18 leap about the thumbprints. That isn't in the trial
10:02:21 testimony.

10:02:21 THE COURT: I already said I'd like to review
10:02:23 the trial testimony. You're going to reference that
10:02:25 area in the trial testimony.

10:02:27 MS. PEEBLES: Yes.

10:02:27 THE COURT: In the memorandum. I'm going to
10:02:29 sustain the objection. Before you go any further,
10:02:33 before -- when you're done, make sure you get
10:02:35 everything back, okay?

10:02:37 MS. BIANCO: Okay. May I have a moment, Your
10:02:52 Honor?

10:02:52 THE COURT: Absolutely.

10:02:53 (Whereupon, there was a pause in the
10:03:23 proceeding.)

10:03:23 **Q.** Sergeant, do you remember, when you were doing the

10:03:28 inventory of the items found in the garage, handwriting an
10:03:33 inventory report?

10:03:34 **A.** I believe Investigator Yerdon handwrote the report.

10:03:38 **Q.** So you didn't write the actual report itself, the
10:03:40 inventory of items?

10:03:41 **A.** The inventory sheet, no, I did not.

10:03:46 **Q.** Were you reading off the items that were found as he
10:03:51 was writing on the inventory sheet?

10:03:52 **A.** Yeah. That's the way it worked.

10:03:54 **Q.** Okay, so if an item didn't contain a date on it you
10:03:57 couldn't give a date, is that right?

10:03:59 **A.** No.

10:04:00 **Q.** Pardon?

10:04:01 **A.** What do you mean if it didn't have a date on it.

10:04:03 **Q.** In other words -- well, I want to show you what's
10:04:05 been marked as Defendant's Exhibit 165 and ask if you
10:04:12 recognize this document.

10:04:14 THE COURT: Hold it. Stop. Are we going to
10:04:16 go back to eleven and three or can I get those away
10:04:18 from the witness right now?

10:04:20 MS. BIANCO: You can probably get them away
10:04:21 from the witness right now.

10:04:22 THE COURT: Bring them over here please.

10:04:27 THE WITNESS: (Handing).

10:04:28 THE COURT: I have B. Do you have eleven or

10:04:30 do I have eleven?

10:04:32 MS. BIANCO: 11-A is right here.

10:04:34 THE COURT: Just don't want to lose stuff.
10:04:36 Thanks.

10:04:37 **Q.** Do you recognize that list?

10:04:47 **A.** It appears to be the list that Investigator Yerdon
10:04:50 and I were working on, yes.

10:04:53 **Q.** And on that particular --

10:04:55 MS. BIANCO: Well, first I'd move to introduce
10:04:57 Defendant's 165. I will show the prosecutor now.

10:05:20 MR. MOODY: Judge, I have no objection.

10:05:22 MS. BIANCO: May I use your stapler, Judge?

10:05:24 THE COURT: I don't know what Mr. Moody said.
10:05:26 He has no objection?

10:05:27 MS. BIANCO: No objection?

10:05:28 MR. MOODY: Yeah.

(Defendant's Exhibit No. 165 was received in
10:05:41 evidence).

10:05:41 **Q.** And on the document itself, it appears that you have
10:05:46 dates written and times written. Would you like to see?

10:05:50 **A.** Sure. Thank you. Yes.

10:05:57 **Q.** What do those dates and times refer to?

10:06:02 **A.** It would be time it was turned in and the date and
10:06:08 the time it was turned in.

10:06:09 **Q.** Okay, I want to --

10:06:09 THE COURT: Do you mean the item was turned
10:06:13 in?

THE WITNESS: Pardon?

THE COURT: Do you mean the item was turned
10:06:13 in?

10:06:13 THE WITNESS: Yes. Date and time when it was
10:06:15 turned in.

10:06:16 **Q.** Direct your attention to page two of that document.
10:06:22 Do you see where it says, "Heidi Allen paperwork?" Do you
10:06:27 see that?

10:06:28 **A.** Yes.

10:06:28 **Q.** And the date, there's a question mark, is that
10:06:32 right?

10:06:32 **A.** Correct.

10:06:32 **Q.** And the time there's a question mark, is that right?

10:06:35 **A.** Yes.

10:06:35 **Q.** And do you see where it says, "1993 personal
10:06:38 planner" a few rows down?

10:06:42 **A.** Yes.

10:06:43 **Q.** And where the date it was turned in, there's a
10:06:46 question mark, correct?

10:06:47 **A.** Yes.

10:06:47 **Q.** And the time it was turned in, there's a question
10:06:50 mark, correct?

10:06:50 **A.** Yes.

10:06:51 **Q.** And that particular document, that inventory is
10:06:55 stamped only May twenty-third, 1995 by the Sheriff's
10:07:00 Department on page one.
10:07:03 MR. MOODY: Objection, Judge. That's the
10:07:04 wrong date.
10:07:05 **A.** I believe it says May twenty-second, 1995.
10:07:08 **Q.** I'm sorry, May twenty-second, correct? You have to
10:07:13 answer for the record, sir.
10:07:14 **A.** Yes.
10:07:14 **Q.** And there's no date stamp that it was ever received
10:07:17 by the District Attorney's Office is there?
10:07:19 **A.** Not on this sheet.
10:07:21 **Q.** And that would have been the itemized list of
10:07:24 evidence, correct?
10:07:26 **A.** There was an itemized list of evidence that we were
10:07:29 collecting at the time, yes.
10:07:30 MS. BIANCO: No further questions. Thank you.
10:07:35 And I will take that and hand it to the Judge.
10:07:38 THE COURT: Thank you. Mr. Moody, any cross?
10:07:43 MR. OAKES: We have a moment please, Your
10:07:44 Honor?
10:07:44 THE COURT: Yes.
10:07:47 (Whereupon, there was a pause in the
proceeding.)
10:08:07 REDIRECT EXAMINATION

10:08:08 BY MR. MOODY:

10:08:09 **Q.** With regard to 165, sergeant, turn to the second
10:08:23 page. Those question marks, the items that -- that you're
10:08:30 cataloging there, do those question marks relate to when
10:08:38 they were turned in or when they were -- were brought to
10:08:41 the Sheriff's Department, or excuse me, to the fire barn in
10:08:44 New Haven?

10:08:44 **A.** This would be when they were turned in to the fire
10:08:47 barn, yes.

10:08:47 **Q.** Okay. And the items, the paperwork and other items
10:08:52 that were in Exhibit B, the card and other things that were
10:09:06 referenced, those are things that were -- belonged to the
10:09:11 Sheriff's Department before they were in the --

10:09:14 MS. BIANCO: Objection, leading.

10:09:15 THE COURT: I'll sustain.

10:09:17 MR. MOODY: Pardon me, Judge?

10:09:19 THE COURT: It's leading.

10:09:20 **Q.** The -- I guess what I'm asking is does -- does
10:09:27 the -- do the question marks indicate whether they were
10:09:32 turned in to the Sheriff's Department or whether or not
10:09:34 they showed up at the fire barn if you understand the
10:09:37 difference.

10:09:40 **A.** Question marks just indicate that we have no idea
10:09:44 when they were turned in to the fire barn or who turned
10:09:48 them in.

10:09:49 **Q.** Okay. I'll take that.

10:10:08 MR. MOODY: I have no further questions,
10:10:09 Judge.

10:10:09 THE COURT: Ms. Bianco

10:10:10 MS. BIANCO: Nothing further. Thank you.

10:10:12 THE COURT: Sir, you can step down.

10:10:13 THE WITNESS: Thank you.

10:10:15 THE COURT: Just so the attorneys know,
10:10:20 district office has given us permission to go to six
10:10:23 o'clock tonight so we're going to six o'clock. Next
10:10:30 witness.

10:10:31 MR. MOODY: The People call Herb Yerdon.

10:11:06 THE CLERK: Raise your right hand, put your
10:11:09 left on the Bible.

10:11:11 HERBERT YERDON, Called as a witness, having
10:11:12 been duly sworn, was examined and testified as follows:

10:11:12 THE CLERK: Please state your name for the
10:11:19 record.

10:11:19 THE WITNESS: Herbert Gene Yerdon.

10:11:22 THE CLERK: Spell your last name.

10:11:24 THE WITNESS: Y-E-R-D-O-N.

10:11:25 THE CLERK: Have a seat please.

10:11:27 THE COURT: Mr. Yerdon, before Mr. Moody
10:11:31 starts asking you questions, I'm going to ask you
10:11:33 whether or not you consent to having your testimony

10:11:37 audio or videotaped.

10:11:39 THE WITNESS: I do not.

10:11:39 THE COURT: No consent. No consent, thank
10:11:41 you. Mr. Yerdon, you're a very soft-spoken person.
10:11:46 Get close to the microphone please. Thank you, sir.
10:11:49 Mr. Moody, your witness.

10:11:51 DIRECT EXAMINATION
10:11:51 BY MR. MOODY:

10:11:52 **Q.** Are you employed, sir?

10:12:02 **A.** Excuse me?

10:12:04 **Q.** Are you employed, sir?

10:12:05 **A.** I work part time.

10:12:06 **Q.** And who do you work part time for?

10:12:11 **A.** I work part time for the Sheriff's Department.

10:12:13 **Q.** And what do you do for them?

10:12:16 **A.** Court security.

10:12:17 **Q.** And how long have you been doing that?

10:12:18 **A.** I think since 2013.

10:12:24 **Q.** Did you previously work for the Sheriff's Department
10:12:27 before 2013?

10:12:28 **A.** Yes, I did.

10:12:29 **Q.** For how long?

10:12:31 **A.** Approximately twenty-three years I believe.

10:12:35 **Q.** And when did you retire?

10:12:37 **A.** Oh-two, 2002.

10:12:41 **Q.** And what was your rank when you retired?

10:12:45 **A.** Criminal investigator.

10:12:47 **Q.** And how long had you been a criminal investigator
10:12:54 with the Sheriff's Department?

10:12:56 **A.** I was since 1987 I believe.

10:13:01 **Q.** Initially I want to ask you if at some point in time
10:13:07 on April third of 1994 if you were working that day.

10:13:10 **A.** Yes, I was.

10:13:11 **Q.** Okay, and were you dispatched somewhere in the Town
10:13:15 of New Haven?

10:13:16 **A.** Yes, I was.

10:13:16 **Q.** Where was that?

10:13:17 **A.** D & W store, 104.

10:13:20 **Q.** And that was in relation to the abduction of Heidi
10:13:24 Allen?

10:13:24 **A.** That's correct.

10:13:25 **Q.** Now, when you got out there, do you remember
10:13:30 approximately what time you got out there?

10:13:33 **A.** About twenty after eight in the morning.

10:13:37 **Q.** And do you remember what the weather was when you
10:13:41 arrived?

10:13:41 **A.** It was a nasty, cold day. I believe it was light
10:13:46 rain.

10:13:50 **Q.** I want to show you what's been marked as People's
10:13:55 Exhibit UU and ask you if you recognize that.

10:14:02 **A.** Yes, I do.

10:14:03 **Q.** And what's that?

10:14:04 **A.** It's the D & W Convenience Store.

10:14:06 **Q.** Okay, and does that photograph fairly and accurately represent what the conditions around the D & W when you showed up around 8:20 that morning?

10:14:16 **A.** That's correct.

10:14:17 **Q.** How long did you stay at the D & W if you remember approximately?

10:14:27 **A.** How long did we stay out there?

10:14:30 **Q.** Yeah.

10:14:33 **A.** We stayed out there during the morning and then -- then we all went over to New Haven fire barn, but I don't know exactly what date or what time we went over the New Haven fire barn.

10:14:45 **Q.** At some point that day did the weather change?

10:14:47 **A.** Yes, it did.

10:14:48 **Q.** What happened?

10:14:49 **A.** Started to snow and it snowed pretty heavy. It started covering everything up.

10:14:56 **Q.** Do you have a specific recollection of -- of what you were thinking when it started to snow?

10:15:03 **A.** Well, I was thinking they were -- we had quite a few volunteers.

10:15:07 MS. PEEBLES: Objection, relevance.

10:15:08 THE COURT: Where are you going to go with
10:15:10 this?

10:15:10 MR. MOODY: Judge, I'm just trying to
10:15:11 establish that according to Mr. Pierce's testimony
10:15:14 there was snow on the ground and when -- when he drove
10:15:17 by the D & W. I'm just trying to establish that it may
10:15:21 have not in fact been the weather at the time.

10:15:22 MS. PEEBLES: Judge, I would ask the Court to
10:15:24 take judicial notice every single witness that
10:15:26 testified during the course of the trial had a
10:15:27 different version, many of which said the roads were
10:15:30 bad and it was snowing, so I think that the trial
10:15:33 testimony speaks for itself just like it does for the
10:15:37 fingerprints regarding the questions posed to
10:15:41 Investigator Yerdon at the time.

10:15:44 THE COURT: Did he testify to this at trial?

10:15:46 MR. MOODY: I don't recollect him testifying
10:15:49 to the weather at the time.

10:15:49 THE COURT: I'll allow the question. There
10:15:51 has been different stories so I'll allow it unless
10:15:54 you're going to show me that's in trial testimony
10:15:57 someplace.

10:15:57 MS. PEEBLES: Judge, every single witness that
10:15:59 testified described what the conditions were and
10:16:02 they were --

10:16:02 THE COURT: And there was no objection at that
10:16:05 time. I'm going to allow the question. Go ahead and
10:16:06 answer the question, then let's move on from there.

10:16:09 **Q.** Do you recollect what you were thinking when the
10:16:11 weather changed?

10:16:12 **A.** I was thinking --

10:16:13 MS. PEEBLES: Objection, relevance.

10:16:14 THE COURT: Why's it relevant?

10:16:15 MS. PEEBLES: What difference does it make?

10:16:18 MR. MOODY: Well --

10:16:18 THE COURT: Hold on. Ms. Peebles, I
10:16:18 understand your objection but no need to get -- to yell
10:16:23 the objection, just what's -- what's the relevance?

10:16:25 MR. MOODY: Judge, I'm just trying to
10:16:27 establish that the snow comes later and -- and why he
10:16:29 is -- he is -- recollects, his recollection I believe
10:16:33 will be indicative of why he -- he -- or that helps
10:16:37 show that -- that it changed later because of what he
10:16:41 was thinking. I don't want to --

10:16:41 THE COURT: Just ask him what he was thinking
10:16:43 and when or when he was thinking. Would that be the
10:16:46 easier way to get there?

10:16:47 MR. MOODY: Well, I thought I had asked him
10:16:49 that. I'm just trying to -- he didn't remember --

10:16:52 **Q.** Do you remember exactly what time the weather

10:16:53 changed?

10:16:53 A. Not exactly. It was -- I was there for awhile.

10:17:00 MR. MOODY: Just trying to establish, Judge, 10:17:02 that -- that -- and I thought that was the question I 10:17:04 asked him is what time, what was he thinking when the 10:17:07 weather changed.

10:17:07 THE COURT: That was the question asked.

10:17:09 MR. MOODY: Yes, and that's all I was trying 10:17:11 to establish.

10:17:11 THE COURT: That's going to establish a time 10:17:13 line for us?

10:17:14 MR. MOODY: It will -- I don't know that it 10:17:15 will establish a timeline per se as much as it will 10:17:18 establish the fact that what he was worried about would 10:17:22 only have been worrying about him after -- if the 10:17:25 weather had changed after Heidi disappears, if that 10:17:29 makes any sense.

10:17:30 MS. PEEBLES: Judge, again, I think the Court 10:17:32 would have to look at Nevilles (ph) who testified 10:17:34 during the course of the trial, said the roads were bad 10:17:37 and there was snow on the road and it was difficult 10:17:40 driving. In terms of this witness's memory from twenty 10:17:43 years ago, I don't see --

10:17:44 THE COURT: You can cross-examine him on his 10:17:45 memory, I'll allow that question, then move on from

10:17:48 there please.

10:17:50 **Q.** Do you remember what you were thinking when the weather changed?

10:17:53 **A.** I was thinking the snow was covering everything up. If we had any evidence, it was being covered up by snow.

10:18:47 THE COURT: Go ahead.

10:18:48 **Q.** I want to show you what's been marked as People's Exhibit SSS and ask you if you recognize that.

10:18:59 **A.** This is a photo of inside the store at the D & W Convenience Store.

10:19:04 **Q.** Okay, and do you recognize that photo from -- as being -- as how -- excuse me, does that photo fairly and fully and accurately represent the conditions of the store inside the store after Heidi Allen disappeared that day?

10:19:19 **A.** Yes, it does.

10:19:20 **Q.** Based on your recollection, did you go in the store?

10:19:25 **A.** Yes, I did.

10:19:26 **Q.** Were there any signs of a struggle inside the store?

10:19:28 **A.** I saw no sign of a struggle inside the store.

10:19:32 **Q.** And do you recollect one way or the other whether any of the doors to the D & W were locked?

10:19:39 **A.** The main door was open when I got there. I -- there's another door to the left of that. I don't know for sure. I believe it was locked but I can't say for sure.

10:19:48 **Q.** Now, at some point during the investigation were

10:19:55 some steps taken to determine what Heidi Allen was wearing
10:20:01 the day she disappeared?

10:20:05 A. It was our belief that she was wearing an SU
10:20:10 sweatshirt.

10:20:10 MS. PEEBLES: Objection to what he believes.

10:20:12 THE COURT: That's not responsive, and where
10:20:13 are we going with this?

10:20:14 MR. MOODY: Well, Judge, the trial transcript
10:20:17 at eleven-thirty-four establishes what Heidi Allen was
10:20:20 swearing the day she disappeared. Mr. Pierce testified
10:20:22 that she was wearing -- that the person that he saw
10:20:24 being apparently attacked and was potentially abducted
10:20:29 in the D & W was wearing a particular type of blue,
10:20:33 puffy coat. The -- while the testimony has been
10:20:38 elicited in the -- in the trial transcript as to what
10:20:42 she was wearing, the -- I believe where I'm going with
10:20:45 this is that the Sheriff's Department attempted to get
10:20:47 a duplicate of the sweatshirt that she was wearing, and
10:20:51 that was never admitted into trial but was still in
10:20:54 evidence at the time, and what I'm seeking to do is in
10:20:56 order to -- to impeach and -- and call upon the
10:21:00 credibility of Mr. Pierce's testimony about what was --
10:21:05 was wear --

10:21:05 THE COURT: Is it going to be the same --

10:21:08 MS. PEEBLES: I would say this, Judge.

10:21:09 THE COURT: Hold on. I'm addressing him right now. Why don't you make reference in a memorandum about --

10:21:14 MR. MOODY: Well, because we haven't had the sweatshirt just to eliminate any possibility that it could confuse with a blue, puffy coat. I was hoping to put the sweatshirt itself in.

10:21:25 THE COURT: Without making reference to -- are you making -- without making reference to the trial transcript, that's fine, but if you are making reference to the trial transcript, just refer it to me, okay?

10:21:33 MR. MOODY: All right.

10:21:34 MS. PEEBLES: Judge, if I may.

10:21:34 THE COURT: Sure.

10:21:35 MS. PEEBLES: I think his argument is misplaced. No one's ever suggested that Heidi Allen did not have the gray SU sweatshirt on. Who is to say that she didn't have a coat with her as well or that there perhaps was a coat at the D & W that she could have put on when she went outside in inclement weather, so the bottom line is it's irrelevant and it's part of the trial transcript.

10:21:57 THE COURT: Well, the blue -- the blue, puffy --

10:21:59 MR. MOODY: Coat.

10:22:00 THE COURT: -- coat is part of the trial transcript or that's Mr. Pierce's testimony?

10:22:03 MR. MOODY: No. No one has ever mentioned until Mr. Pierce mentioned a blue, puffy coat.

10:22:08 THE COURT: What's the reference to the trial transcript right now?

10:22:10 MR. MOODY: The page number or what?

10:22:12 THE COURT: You just made reference to.

10:22:13 MR. MOODY: The page reference is eleven-thirty-four. It says she was wearing a white pair of canvass shoes, a light set of blue jeans.

10:22:20 THE COURT: Did he testify to this?

10:22:22 MR. MOODY: This is Brett Law testified to this. Brett Law.

10:22:25 MS. PEEBLES: Judge, we are not -- we do not contest what Heidi Allen was wearing the morning she was abducted.

10:22:31 THE COURT: Just make -- just in a trial memorandum or memorandum just make reference to that.

10:22:36 MR. MOODY: All right.

10:22:37 THE COURT: Same thing with the fingerprint.

10:22:39 MR. MOODY: So the sweatshirt --

10:22:40 THE COURT: I don't see it's relevant.

10:22:43 MR. MOODY: Okay.

10:22:43 **Q.** I want to move forward a little bit to the late summer of 1994. Were you still involved in the investigation involving the abduction of Heidi Allen?
10:22:48
10:22:50

10:22:56 **A.** Yes, I was.

10:22:56 **Q.** And at some point in time did you speak -- do you -- did you speak with a Tracey Breckenridge?
10:22:59

10:23:03 **A.** I believe I did. I -- I'd have to check my notes but --
10:23:06

10:23:07 **Q.** Okay, if I were to show you your report, would that refresh your recollection?
10:23:12

10:23:13 **A.** Probably would.

10:24:03 MR. MOODY: I apologize, Judge.

10:24:05 THE COURT: That's all right.

10:24:40 (Whereupon, there was a pause in the proceeding.)
10:24:53

10:24:53 **Q.** Showing you what's been previously marked as People's Exhibit PP-2.
10:25:03

(Whereupon, there was a pause in the proceeding).
10:25:54

10:25:54 THE COURT: Mr. Moody, do you need some time?

10:25:56 MR. MOODY: No, Judge, I just got to find the right page.
10:25:59

(Whereupon, there was a pause in the proceeding).
10:26:26

10:26:26 MR. MOODY: Actually I may need a minute, 10:26:28 Judge, I'm sorry.

10:26:28 THE COURT: I was contacted about two family offenses have been filed in Lewis County. Let me take ten minutes so I can take testimony on those. That should give Mr. Moody time to find what he needs to find, okay. You can step down, sir.

10:26:42 (Whereupon, there was a recess).

10:44:56 THE COURT: Bring Mr. Yerdon back in please. Mr. Yerdon, take the stand again please. Mr. Yerdon, consider that you're still under oath, okay, sir?

10:45:13 THE WITNESS: Yes, sir.

10:45:14 THE COURT: Have a seat please, sir. What page, Mr. Moody?

10:45:18 MR. MOODY: Sorry, yes, Judge. I wrote down the wrong page number. I apologize. It's page --

10:45:22 **Q.** I want to refer to you now to page one-fifty-two of exhibit this is PP-2.

10:45:31 MS. BIANCO: Could Mr. Moody put the mike back on?

10:45:35 MR. MOODY: I muted it while I was wandering around. Page one-fifty-two.

10:45:40 MS. BIANCO: Thank you.

10:45:41 **Q.** If you could review that and see if that refreshes your recollection about speaking to Tracey Breckenridge and where you spoke with her.

10:45:49 **A.** Yes, it does.
10:46:00 **Q.** Take that back. And where -- where did you speak
10:46:08 with her?
10:46:09 **A.** Kenyon Road.
10:46:12 **Q.** And do you remember what date that was that you
10:46:14 spoke with her?
10:46:16 **A.** I don't remember the date.
10:46:18 **Q.** Okay, showing you again page one-fifty-two of
10:46:22 Exhibit PP-2.
10:46:26 **A.** August third, ninety-four.
10:46:29 **Q.** August third or --
10:46:35 **A.** Oh, okay. August thirty-one, ninety-four. Didn't
10:46:42 see that one.
10:46:43 **Q.** Okay. Thank you. Now moving as part of the
10:46:56 investigation that was going on regarding Heidi Allen, was
10:47:01 the Sheriff's Department having any kind of regular
10:47:04 meetings among members of CID?
10:47:07 **A.** We were having meetings in the very beginning just
10:47:10 about every day and then it -- then it was little, you
10:47:13 know, like maybe once a week but --
10:47:15 **Q.** I want to direct your attention to December eighth
10:47:18 of 1994 and ask you if you remember having a meeting on
10:47:23 that day.
10:47:26 **A.** I don't remember, you know.
10:47:29 **Q.** Okay, if I were to show you your report, would that

10:47:31 refresh your recollection?

10:47:32 **A.** Yes, it would.

10:47:33 **Q.** All right, specifically now I'm going to ask you to
10:47:39 look at page two-hundred and three of Exhibit PP-3 which
10:47:48 was marked, I got that turned sideways here, and ask you if
10:47:52 that refreshes your recollection as to whether or not there
10:47:55 was a meeting on December eighth.

10:47:58 **A.** Yes, there was.

10:48:01 **Q.** And I'll take that back now if you would. And does
10:48:06 that refresh your recollection as to -- as to whether or
10:48:12 not Lieutenant Goodsell was at that meeting?

10:48:14 **A.** Yes, he was.

10:48:16 **Q.** Okay, and do you remember what time the meeting was?

10:48:20 **A.** I believe it said one o'clock.

10:48:23 **Q.** Do you want to look at it again to refresh your
10:48:25 recollection?

10:48:27 **A.** Yeah.

10:48:28 **Q.** Showing you again page two-hundred and three of page
10:48:31 PP-3.

10:48:35 **A.** It was one o'clock, case review, yep.

10:48:39 **Q.** And do you remember -- you said case review. Do you
10:48:43 remember what -- any particular subject matters that
10:48:46 occurred on that day?

10:48:48 **A.** I had written down "Brady material."

10:48:51 **Q.** And does that refresh your recollection as to what

10:48:53 the topic of that meeting was?

10:48:56 **A.** Exactly what it said. Brady material.

10:49:06 MR. MOODY: I have no further questions,
10:49:12 Judge.

10:49:12 MS. PEEBLES: Judge, I have no questions of
10:49:14 this witness.

10:49:14 THE COURT: None?

10:49:15 MS. PEEBLES: None.

10:49:15 THE COURT: You can step down, sir.

10:49:16 THE WITNESS: Thank you.

10:49:17 THE COURT: Next witness? Next witness?

10:49:31 MR. MOODY: Judge --

10:49:32 THE COURT: I received Mr. Oakes's letter
10:49:34 about the witnesses you were going to call. You had a
10:49:38 number for the morning and a number for the afternoon.
10:49:41 Have we exceeded your number for the morning?

10:49:43 MR. MOODY: We are on the last witness for the
10:49:46 morning now.

10:49:46 THE COURT: If necessary can we call an
10:49:48 afternoon witness sooner or later or not?

10:49:50 MR. OAKES: I don't believe they'll be here.
10:49:51 They plan to be here at one o'clock, Your Honor.

10:49:53 THE COURT: Okay, call your witness.

10:49:54 MR. OAKES: But I will say, Your Honor, I
10:49:56 don't anticipate the afternoon testimony being four

10:50:00 witnesses would exceed two hours all together.

10:50:02 THE COURT: We'll see.

10:50:03 MR. OAKES: Okay.

10:50:04 THE COURT: Who is your next witness?

10:50:06 MR. MOODY: People call investigator Dale
10:50:09 MacDonald.

10:50:30 THE COURT: Mr. MacDonald, would you go
10:50:34 retrieve him?

10:50:35 THE COURT DEPUTY: Oh, I'm sorry, I wasn't
10:50:37 here.

10:50:38 THE COURT: That's all right.

10:51:01 THE CLERK: Raise your right hand, left on the
10:51:03 Bible.

10:51:04 DALE MACDONALD, Called as a witness, having
10:51:10 been duly sworn, was examined and testified as follows:

10:51:10 THE CLERK: Please state your name for the
10:51:12 record.

10:51:12 THE WITNESS: Dale MacDonald,

10:51:13 THE CLERK: Spell your last name.

10:51:14 THE WITNESS: M-A-C-D-O-N-A-L-D.

10:51:17 THE CLERK: Have a seat please.

10:51:18 THE COURT: Mr. MacDonald, prior to Mr. Moody
10:51:21 asking you any questions, I'm going to ask you whether
10:51:23 or not you consent to have your testimony audio and
10:51:26 videotaped.

10:51:27 THE WITNESS: No.

10:51:32 THE COURT: Your witness, Mr. Moody.

10:51:34 MR. MOODY: Thank you, Judge.

DIRECT EXAMINATION

10:51:39 BY MR. MOODY:

10:51:39 **Q.** Are you employed, sir?

10:51:41 **A.** I am.

10:51:41 **Q.** By whom?

10:51:42 **A.** The Oswego County Sheriff's Department.

10:51:44 **Q.** What is your current position or title with the 10:51:47 Oswego County Sheriff's Department?

10:51:48 **A.** Criminal investigator.

10:51:50 **Q.** And how long have you been a criminal investigator 10:51:51 with the Oswego County Sheriff's Department?

10:51:53 **A.** Approximately three years.

10:51:54 **Q.** How long have you been employed overall for the 10:51:56 Sheriff's Department?

10:51:57 **A.** Approximately fourteen years.

10:51:59 **Q.** What is your current -- within the Criminal 10:52:08 Investigations Division do you have a specific assignment?

10:52:09 **A.** The evidence officer and manager.

10:52:12 **Q.** And what basically are your duties as the evidence 10:52:15 officer/manager?

10:52:16 **A.** I control the evidence that comes into the 10:52:20 department, log it in, do with it what needs to be done as

10:52:24 far as court proceedings or returning anything that needs
10:52:27 to be returned.

10:52:28 **Q.** And approximately how long have you been doing that
10:52:31 job?

10:52:31 **A.** A year and a half.

10:52:32 **Q.** Initially I want to ask you if you know an
10:52:39 individual by the name of Roger Breckenridge.

10:52:41 **A.** Yes.

10:52:41 **Q.** And how do you know Mr. Breckenridge?

10:52:43 **A.** Through work I have arrested him.

10:52:53 **Q.** Did there come a time when you were investigating
10:52:55 Mr. Breckenridge with relation to some stollen tractors?

10:53:00 **A.** Yes.

10:53:00 **Q.** How did that come about?

10:53:02 **A.** There was a complaint called in by the victim of
10:53:05 the --

10:53:05 MS. BIANCO: Objection to the relevance of
10:53:07 stollen tractors.

10:53:08 THE COURT: Mr. Moody?

10:53:09 MR. MOODY: Judge, I'm just going to get at
10:53:11 the fact that there obviously -- one of the things
10:53:12 that -- that they are pointing to is that Roger
10:53:16 Breckenridge was not being truthful here when he
10:53:20 testified or when he was interviewed subsequently
10:53:23 with -- by or previously by the Sheriff's Department

10:53:27 with regard to this. Roger Breckenridge, this
10:53:31 individual will testify that he arrested Roger
10:53:34 Breckenridge and he -- Roger Breckenridge gave a
10:53:37 statement. He'll describe briefly the circumstances
10:53:39 surrounding it.

10:53:39 THE COURT: That's fine. Go ahead.

10:53:40 MS. BIANCO: Your Honor --

10:53:41 THE COURT: Yes.

10:53:41 MS. BIANCO: May I be heard?

10:53:42 THE COURT: Sure because it's not really the
10:53:44 tractor issue, the arrest issue.

10:53:46 MS. BIANCO: It's an arrest issue but I don't
10:53:49 know if he's trying to establish by inference because
10:53:52 he confessed to stealing tractors therefore he would
10:53:54 confess to murdering or abducting Heidi Allen. If
10:53:58 that's where this is going it's -- it's not relevant.
10:54:01 It's like apples and oranges. Confessing to stealing a
10:54:04 tractor versus abduction is two different matters.

10:54:07 THE COURT: I think it's --

10:54:08 MR. MOODY: It's a weight issue, Judge, more
10:54:09 than anything.

10:54:10 THE COURT: I'll allow it for weight issue and
10:54:12 that's about it.

10:54:14 **Q.** Judge, or excuse me, Investigator MacDonald, at some
10:54:17 point in time did there come a time with regard to the

10:54:19 stollen tractors that you had a conversation with Roger
10:54:22 Breckenridge?

10:54:23 **A.** Yes.

10:54:23 **Q.** Where did that occur?

10:54:25 **A.** Occurred over the phone.

10:54:25 **Q.** Did he call you or did you call him?

10:54:27 **A.** I believe he called me.

10:54:28 **Q.** And what specifically did he tell you?

10:54:32 **A.** Specifically that --

10:54:34 MS. BIANCO: Objection, hearsay.

10:54:37 MR. MOODY: I'm not -- Judge, I'm not offering
10:54:39 it for the truth of whether he stole the tractors or
10:54:42 not other than the fact that he admitted to it, more
10:54:43 the matter of the fact that this individual on the
10:54:46 phone admitted to a crime that he is now in state
10:54:50 prison for, and should he, you know, the question
10:54:53 becomes whether or not we would expect him under --
10:54:57 under the questioning here or the questioning of the
10:54:59 Sheriff's Department to admit to his other crimes.

10:55:03 MS. BIANCO: Objection, Judge. It is offered
10:55:06 for the truth. It's offered for the truth.

10:55:06 THE COURT: I'm going to sustain the
10:55:07 objection.

10:55:09 **Q.** Did he admit to you that -- his involvement on the
10:55:12 phone?

10:55:13 MS. BIANCO: Objection. It's still hearsay,
10:55:14 Your Honor.

10:55:14 THE COURT: I'll sustain that objection.

10:55:21 MR. MOODY: I'll move on from that then.

10:55:24 THE COURT: Please.

10:55:25 **Q.** You mentioned that you are currently in charge of
10:55:27 the evidence in the Sheriff's Department. Would that
10:55:30 include the file, the Sheriff's Department investigation
10:55:34 file for the investigation of the abduction of Heidi Allen?

10:55:38 **A.** It does.

10:55:38 **Q.** And during the course of your job duties, have you
10:55:42 become familiar with that file?

10:55:43 **A.** Yes.

10:55:43 **Q.** And did you at my request prepare some photocopies
10:55:49 of documents?

10:55:50 **A.** I did.

10:55:51 **Q.** Tell us about that procedure, what happened?

10:55:52 **A.** You and I went to the evidence area where the
10:55:56 records are kept, took the originals out, up to your
10:55:59 office, made photocopies, color photocopies of the
10:56:02 originals.

10:56:03 **Q.** And were you present for the photocopying?

10:56:05 **A.** Yes.

10:56:06 **Q.** And did you compare the photocopying to the
10:56:08 originals?

10:56:08 A. I did.

10:56:09 Q. And what did you do with the photocopies after that?

10:56:11 A. I sealed them in evidence bags, filled out an
10:56:15 evidence tag, turned them over to DA department.

10:56:18 Q. I have a number of exhibits I'm going to show you.
10:56:21 I'll start with Exhibit NNN and ask you if you recognize
10:56:30 that.

10:56:30 A. I do.

10:56:31 Q. And how do you recognize it?

10:56:33 A. It's a color photocopy that we made.

10:56:37 Q. Okay, and how do you know it's the same color
10:56:41 photocopy that we made?

10:56:42 A. Because it's in the bag that -- well, it's now
10:56:45 opened, but it was sealed with my initials and dated.

10:56:49 Q. And you said something about an evidence tag. Is
10:56:51 there an evidence tag on there?

10:56:52 A. There is a tag on it.

10:56:54 Q. And who filled the evidence tag out?

10:56:55 A. I filled the tag out.

10:56:57 Q. And this -- so the -- just so I understand then
10:57:01 the -- what is contained in Exhibit NNN is an exact
10:57:04 duplicate of what's in the original file?

10:57:06 A. Yes.

10:57:07 Q. Okay. Showing you now Exhibit OOO and ask you if
10:57:23 you recognize that as well.

10:57:26 A. I do.

10:57:27 Q. And what is that?

10:57:28 A. It's a color photocopy of a report, Chief's report.

10:57:32 Q. Okay, and is it -- how do you recognize that as the
10:57:38 color photocopy?

10:57:40 A. The bag it's in, the seal and the tag.

10:57:42 Q. Okay, and does it also contain an evidence tag?

10:57:47 A. It does.

10:57:47 Q. And do you recognize the evidence tag?

10:57:50 A. I do.

10:57:50 Q. And who filled the evidence tag out?

10:57:52 A. Myself.

10:57:53 Q. And would again, would this be an exact duplicate of
10:57:59 what is in the -- in the Sheriff's Department file?

10:58:03 A. Yes.

10:58:04 Q. You compared it to what's contained in Exhibit O to
10:58:07 the original?

10:58:07 A. Yes.

10:58:07 Q. Showing you now what's been marked as People's
10:58:14 Exhibit LLL, again, ask you if you recognize that.

10:58:19 A. I do.

10:58:20 Q. And what is that?

10:58:21 A. It's a color photocopy of evidence sheets.

10:58:26 Q. And did you have an opportunity to or how do you
10:58:27 recognize it as the color photocopy?

10:58:29 **A.** The evidence tag that's on it that I filled out and the seal with my initials and date across it.

10:58:34 **Q.** And again, did you compare that to the original?

10:58:37 **A.** I did.

10:58:37 **Q.** And is it an exact duplicate of what's in the original?

10:58:42 **A.** It is.

10:58:42 **Q.** And these are all color photocopies contained within?

10:58:45 **A.** Yes.

10:58:46 **Q.** Showing you now what's been marked as People's Exhibit KKK, ask you if you recognize that.

10:59:01 **A.** I do.

10:59:02 **Q.** And what is that?

10:59:04 **A.** It's a color photocopy of the original.

10:59:07 **Q.** Okay, and how do you recognize it as the color -- as the same color photocopy?

10:59:12 **A.** The evidence tag that I put on it, the seal and the date that I put on it.

10:59:18 **Q.** And did you compare that with the original?

10:59:21 **A.** I did.

10:59:23 **Q.** And how did they compare?

10:59:26 **A.** Exact duplicate.

10:59:28 **Q.** Now I want to show you what's been marked as but not

11:00:07 received as People's Exhibit F and ask you if you recognize

11:00:11 that.

11:00:11 **A.** I do.

11:00:12 **Q.** And what is that?

11:00:13 **A.** It's a colored copy of a lead sheet.

11:00:17 **Q.** Okay, and how do you recognize that as a colored
11:00:20 copy?

11:00:21 **A.** From the tag that's on it. Well, the green mark
11:00:25 that's on it is the color copy.

11:00:27 **Q.** Is that a color copy that you made at my request?

11:00:30 **A.** Yes.

11:00:30 **Q.** And how do you recognize that as the same color copy
11:00:33 that you made?

11:00:34 **A.** From the tag that I affixed to it and the initials
11:00:37 and date that I put on it.

11:00:38 **Q.** Okay, and did you compare it to the original?

11:00:42 **A.** I did.

11:00:43 **Q.** And how does it compare to the original?

11:00:44 **A.** Exactly.

11:00:46 MS. PEEBLES: Mark, that's not in evidence?

11:00:57 MR. MOODY: Not yet.

11:00:58 MS. BIANCO: Can I see it?

11:01:00 MR. MOODY: Sure. (Handing).

11:01:42 **Q.** Now I want to show you what's been marked but not
11:01:48 received as People's Exhibit 00 and ask you if you
11:01:52 recognize that.

11:01:52 **A.** I do.

11:01:53 **Q.** And what is that?

11:01:54 **A.** It's a colored copy of a lead sheet.

11:01:56 **Q.** And did you make -- did you make that at my request?

11:01:59 **A.** I did.

11:01:59 **Q.** And how do you recognize it as the same one?

11:02:02 **A.** From the tag that I affixed to it, my initials and
11:02:05 date that are on it.

11:02:06 **Q.** And the initials, date were on what part of the
11:02:08 document?

11:02:09 **A.** It's on the tag itself and it's across the heat seal
11:02:13 that I put on the document.

11:02:14 **Q.** And again, did you compare this to the original?

11:02:16 **A.** I did.

11:02:17 **Q.** And how did it compare?

11:02:18 **A.** It's exact copy.

11:02:19 (People's Exhibit IIII was marked for
11:03:00 identification).

11:03:05 **Q.** Showing you now what's been marked as IIII and ask
11:03:09 you if you recognize that.

11:03:10 **A.** I do.

11:03:11 **Q.** And what is that?

11:03:12 **A.** It's a colored copy of a lead sheet.

11:03:15 **Q.** And did you make that at my request?

11:03:16 **A.** I did.

11:03:17 **Q.** And did you -- how do you recognize it as the same
11:03:22 one that you made?
11:03:23 **A.** From the evidence tag I affixed to it and my
11:03:26 initials and date across the seal.
11:03:29 **Q.** And did you compare that to the original document
11:03:31 that's in the Sheriff's Department file as well?
11:03:34 **A.** I did.
11:03:34 **Q.** And how did it compare?
11:03:35 **A.** It's an exact copy.
11:03:37 **Q.** Thank you.
11:03:40 MR. MOODY: Judge, at this point in time I
11:03:41 would move to admit Exhibit IIII, OO and Exhibit F.
11:04:14 MS. PEEBLES: The only objection would be I'm
11:04:17 not quite certain about People's F because there's a
11:04:21 Heidi search center sheet and I'm not entirely sure
11:04:25 that it's actually part of this particular lead. If it
11:04:28 is --
11:04:28 MR. MOODY: It was stapled to it when --
11:04:30 when --
11:04:30 THE COURT: Before we reach the objection, how
11:04:33 about OO and IIII?
11:04:35 MS. PEEBLES: We don't have any objection to
11:04:36 either of those, Judge.
11:04:37 THE COURT: Okay, let's bring those up and
11:04:38 move those in.

(People's Exhibit OO was received in evidence).

(People's Exhibit IIII was received in evidence).

11:04:39 THE COURT: The objection regarding single F 11:04:41 is what again, Ms. Peebles?

11:04:43 MR. MOODY: Single F.

11:04:45 MS. PEEBLES: F as in Frank.

THE COURT: Right.

11:04:47 MS. PEEBLES: That's right. There's no 11:05:03 indication that it's all part of this same lead so that 11:05:06 would be -- I guess it's a weight issue, Judge, and --

11:05:10 THE COURT: Mr. Moody, can you address that?

11:05:12 MR. MOODY: Judge, it just -- when the work 11:05:16 copy that I have and the copy that we saw in the file 11:05:18 had that -- the sheet of paper, the Heidi search center 11:05:26 sheet stapled to it, I will say that -- that I don't 11:05:31 know what -- I know that that was part of the -- I 11:05:38 think the reason that was attached to it I think had to 11:05:40 do with the fact that they just trying to -- I think 11:05:47 what I'm trying to say is --

11:05:49 THE COURT: I'll move it in but --

11:05:51 MS. PEEBLES: Simply because this lead was 11:05:53 from August thirtieth, then they have a search sheet 11:05:55 here for 4/9/94, so this was in August, this is in

11:05:59 April, I'm -- I'm not certain --

11:06:03 MR. MOODY: I just think it was stapled
11:06:04 together as part -- for whatever investigator at the
11:06:08 time stapled that piece of paper together. Whether it
11:06:09 was Investigator Whipple or Deputy Cromie I don't know.

11:06:13 THE COURT: I'll allow it. I will consider --
11:06:16 the last page you're talking about, Ms. Peebles?

11:06:18 MS. PEEBLES: It's in the middle. There's
11:06:20 another report attached.

11:06:21 THE COURT: Heidi Allen sheet I'll review for
11:06:23 weight issue, okay? That's on F as in Frank.

11:06:27 MS. PEEBLES: That's F as in Frank. I guess
11:06:34 its relevance and weight but --

(People's Exhibit F was received in evidence).

11:07:52 (People's Exhibit JJJJ was marked for
11:07:53 identification).

11:07:53 **Q.** Now showing you what's been marked as Exhibit JJJJ,
11:07:57 do you recognize that?

11:07:59 **A.** I do.

11:07:59 **Q.** And what is that?

11:08:00 **A.** It's a colored copy of a lead sheet.

11:08:02 **Q.** And what lead sheet number?

11:08:04 **A.** Three five seven.

11:08:06 **Q.** And is that a -- did you make that copy at my
11:08:10 request?

11:08:10 **A.** I did.

11:08:10 **Q.** How do you know it's the same copy?

11:08:13 **A.** From the seal that's on it, the evidence tag, and it looks like the initials and date that I did seal across it.

11:08:20 **Q.** Okay, and did you compare this to the original?

11:08:23 **A.** I did.

11:08:23 **Q.** And did -- how did it compare to the original?

11:08:27 **A.** It's exact copy.

11:08:28 MR. MOODY: Judge, showing Exhibit JJJJ to defense counsel, I would also move this.

11:08:36 MS. PEEBLES: Actually this is already in evidence.

11:08:39 MR. MOODY: Judge, the copy that's in is not -- doesn't have the green mark and that's what these are being admitted for.

11:08:44 MS. PEEBLES: Well, we never said that that wasn't turned over.

11:08:47 MR. MOODY: That's part of -- just corroborates the fact that, you know, some of the stuff, the argument would be, Judge, that it has a green mark and it was turned in, they're not disputing that it was turned over, the argument being just corroborates the fact that items that were copied, it's not as though the things they're saying they didn't get are the only things that had the green mark if that

11:09:06 makes a backhanded way of sense.

11:09:09 MS. PEEBLES: Wait a minute. Actually --

11:09:10 THE COURT: So hold it. Are you going to
11:09:12 introduce every single piece that was introduced or
11:09:14 allegedly given to Judge Fahey and Judge Walsh?

11:09:17 MR. MOODY: Most of it is already in, Judge,
11:09:20 most of it's already in, I'm not necessarily not doing
11:09:23 every single piece, I'm just -- this happens to be the
11:09:25 Darlene Upcraft one which they're not disputing, I
11:09:29 understand that was turned over to them, simply trying
11:09:32 to establish that it corroborates that this has the
11:09:34 green mark on it, they know they got that. It is
11:09:37 simply a weight issue as far as whether or not you
11:09:40 think that would -- is evidence to support the fact
11:09:45 that that's how the system worked.

11:09:46 MS. PEEBLES: Well, can I just be heard
11:09:48 briefly on that, Judge?

11:09:49 THE COURT: Yes.

11:09:49 MS. PEEBLES: The documents that were in
11:09:52 possession of defense counsel's file did not contain a
11:09:56 green mark. From what my understanding is the green
11:09:58 mark simply means the document was copied, it doesn't
11:10:01 mean that it was turned over, that was the testimony,
11:10:05 so that's -- that's what the green mark establishes,
11:10:08 and now we're entering duplicate copies of things and

11:10:12 again it's the same thing, and we've never suggested
11:10:15 that any of the documents that Mr. Moody just turned
11:10:16 over to the Court and introduced into evidence were
11:10:19 never -- weren't turned over. We concede that they
11:10:21 were. There were only several documents we're saying
11:10:24 the defense did not receive.

11:10:26 MS. BIANCO: And just to clarify, the
11:10:28 significance of the Uplinger lead was not that the
11:10:31 document wasn't turned over --

11:10:33 MR. MOODY: Upcraft.

11:10:34 MS. BIANCO: Upcraft. Not that the document
11:10:37 wasn't turned over, but the fact is there was
11:10:39 information missing from the document that she
11:10:41 contended she said.

11:10:42 THE COURT: Allegedly.

11:10:43 MS. BIANCO: Allegedly.

11:10:44 THE COURT: Mr. Moody, I think much like the
11:10:46 argument I made to Ms. Bianco, sounds like you're
11:10:50 trying to prove something by inference only, and I'm
11:10:51 going to sustain JJJJ out.

11:10:55 MR. MOODY: I have no further questions.

11:10:57 THE COURT: Ms. Bianco, Ms. Peebles?

11:11:40 MS. BIANCO: I just need to get III and OOO.

11:11:46 MR. MOODY: I don't think there is OOOO. Did
11:11:49 you mean OO?

11:11:51 MS. BIANCO: OO.

11:11:55 CROSS-EXAMINATION

11:11:56 BY BIANCO:

11:11:57 **Q.** Now Investigator MacDonald, I believe you testified
11:12:22 that -- that you're in charge of -- control of the Heidi
11:12:25 Allen file, is that correct?

11:12:26 **A.** Yes.

11:12:27 **Q.** And you are familiar with the lead sheet list, the
11:12:33 list of leads, the handwritten master list?

11:12:35 **A.** Yes.

11:12:36 **Q.** Showing you what's been marked Defendant's Exhibit
11:12:48 163 --

11:12:58 MS. BIANCO: I'll need a new sticker for 163.

11:13:01 THE COURT: That's fine. Is that the original
11:13:03 I take it?

11:13:04 MS. BIANCO: Well, actually this one does not
11:13:11 say master on it.

11:13:31 (Whereupon, there was an off the record
11:13:35 discussion).

11:13:51 MS. BIANCO: This is number 163.

11:13:53 THE COURT: That's already in.

11:13:55 MS. BIANCO: It's going to be I hope. I spoke
11:13:57 to Mr. Oakes yesterday and the People my understanding
11:13:59 are willing to stipulate to the admission of this
11:14:01 particular document.

11:14:02 THE COURT: Mr. Oakes?
11:14:03 MR. MOODY: I just want to --
11:14:13 (Whereupon, there was a pause in the
11:16:35 proceeding.)
11:16:35 THE COURT: Mr. Oakes and Mr. Moody, Ms.
11:16:36 Bianco is going to use a copy of Exhibit 144. 144 is
11:16:40 in evidence. There's some difficulty locating it. Any
11:16:45 problem using a copy of it?
11:16:47 MS. BIANCO: That's the punch card.
11:16:49 MR. MOODY: The original punch card is in
11:16:51 somewhere.
11:16:51 MR. OAKES: But you just can't locate it, I
11:16:55 have no problem using the duplicate, Your Honor, that's
11:16:57 fine.
11:17:00 THE COURT: Just use a copy. Any objection,
11:17:03 Mr. Moody?
11:17:03 MR. MOODY: Oh, yeah, no, that's fine.
11:17:04 THE COURT: Ms. Bianco, just use a copy. We
11:17:08 all agree it's in.
11:17:11 MS. BIANCO: I'm just waiting for them to
11:17:14 finish reviewing that.
11:17:15 THE COURT: I understand.
11:17:16 (Whereupon, there was a pause in the
11:18:32 proceeding.)
11:18:32 MS. BIANCO: Any objection to 163?

11:18:34 MR. OAKES: No objection, Your Honor.

(Defendant's Exhibit No. 163 was received in evidence). 11:18:36

11:18:36 **Q.** Showing you Defendant's Exhibit 163, is this the
11:18:44 master handwritten log sheet?

11:18:47 **A.** It's a copy of it, yes.

11:18:49 **Q.** Okay, and the log sheet itself, that includes all of
11:18:56 the named leads, is that correct?

11:19:00 **A.** I believe so.

11:19:01 **Q.** Okay, and when you took over the file at the Oswego
11:19:06 County Sheriff's Department, would it be fair to say that a
11:19:09 lot of the leads were not in -- in order?

11:19:14 **A.** I can't actually say one way or another. I actually
11:19:19 take control of the file, I just have custody of the file,
11:19:22 I don't -- it's not my case, I don't know what you're --

11:19:25 **Q.** Did you organize the boxes in and the lead sheets?

11:19:30 **A.** No. They were all organized by the time I got in
11:19:32 there.

11:19:32 **Q.** Okay, so with regards to People's Exhibit F --

11:19:44 MS. BIANCO: Mark, do you have F? Oh, they're
11:19:50 over here. F is not here.

11:20:24 MR. MOODY: Here it is.

11:20:25 MS. BIANCO: Thank you.

11:20:28 **Q.** With regards to People's Exhibit F, these were
11:20:36 contained in the same lead sheet, is that right, everything

11:20:40 in F was contained together?

11:20:41 **A.** Yeah. It was all stapled together.

11:20:45 **Q.** Okay.

11:20:45 **A.** Under that lead.

11:20:47 **Q.** And the date for the report itself, the lead sheet 11:20:51 thirteen-forty-three, was 8/30/94, is that right?

11:20:56 **A.** According to this sheet, yes.

11:21:00 **Q.** Okay, and the date for the Heidi Allen center 11:21:03 volunteer sign-in was 4/9/94, is that right?

11:21:08 **A.** That's what it says.

11:21:09 **Q.** And these were all put together in one particular 11:21:13 lead?

11:21:14 **A.** They were all stapled together, yes.

11:21:16 **Q.** Okay, do you know why two different documents were 11:21:19 put in one particular lead?

11:21:21 **A.** Not a clue.

11:21:22 **Q.** Well, were those documents put together, the leads, 11:21:26 in any dated order?

11:21:29 **A.** Yeah, as they came in.

11:21:31 **Q.** As they came in?

11:21:34 **A.** It doesn't --

11:21:35 MR. MOODY: I'm going to object, Judge. Dated 11:21:38 order, I'm not sure what a dated order means. If she's 11:21:41 asking why they were stapled together that's one thing. 11:21:44 If she's asking I mean --

11:21:45 THE COURT: I'm not sure he's -- he has the
11:21:47 knowledge.

11:21:48 THE WITNESS: It's way before my time.

11:21:50 THE COURT: Hold on. You have to ask him if
11:21:51 he has some knowledge of how these are done. He's
11:21:54 testified he's the custodian of these, not that he
11:21:57 worked the file. Ask him.

11:21:58 **Q.** Certainly. Do you have any knowledge of how the
11:22:00 lead sheets were put together?

11:22:01 **A.** I do not.

11:22:02 **Q.** Okay, but you have been keeping track of the actual
11:22:08 leads as they have come in since you have been on board,
11:22:11 correct?

11:22:11 **A.** By keeping track, what do you mean?

11:22:15 **Q.** Well, making sure they were put in numbered order
11:22:19 and put in the box.

11:22:20 **A.** Correct. As they've came in since I have been
11:22:23 there.

11:22:25 **Q.** Well, leads fourteen-hundred to fifteen-hundred,
11:22:48 would you agree that they all came in on or after 4/28/95,
11:22:56 would you agree with that?

11:22:57 MR. MOODY: I'm going to object, Judge. I
11:22:59 don't think he has a basis of knowledge. His -- we're
11:23:01 going back to ninety-five.

11:23:02 THE COURT: What's the basis of knowledge?

11:23:03 You can ask if the document refreshes his recollection,
11:23:06 if he has one, but then you have to establish he's
11:23:09 looked at that first.

11:23:10 MS. BIANCO: I will do that, Judge.

11:23:11 THE COURT: Thank you.

11:23:13 **Q.** Have you looked at this document?

11:23:14 **A.** I have.

11:23:15 **Q.** Okay, have you looked at some of the files contained
11:23:18 within this document?

11:23:19 **A.** I have.

11:23:19 **Q.** Okay, and you said you were helping Mr. Moody copy
11:23:24 some of the documents and you were comparing them to the
11:23:26 original, correct?

11:23:27 **A.** Correct.

11:23:27 **Q.** So item number fourteen-hundred, there's a date that
11:23:34 that was -- that came in, is that right?

11:23:38 THE COURT: Have you -- would that refresh
11:23:40 your recollection?

11:23:41 THE WITNESS: Well, I mean I can tell you
11:23:43 what's there.

11:23:44 THE COURT: It's not going to refresh his
11:23:46 recollection.

11:23:50 **Q.** Well, when item fifteen-hundred came in, you were
11:23:56 there at that time or no?

11:23:58 **A.** It depends on what the date is.

11:24:00 **Q.** If the date said 8/29/00, you would have no familiarity with that?

11:24:04 **A.** None.

11:24:05 **Q.** So when you were comparing things for Mr. Moody, you were simply looking at one document and looking at another and saying this appears to be the same.

11:24:14 **A.** No, it would be the same.

11:24:16 **Q.** You have no familiarity with the documents though?

11:24:19 **A.** As we were making copies, I had the original in one hand and a copy in the other, and I compared them, they were exact.

11:24:26 **Q.** Well, for example, Exhibit F, thirteen-forty-three, you note that that came in on 8/30/94, correct?

11:24:42 MR. MOODY: Objection, Judge. He doesn't know when the lead came in.

11:24:44 THE COURT: I'm going to sustain the objection.

11:24:53 **Q.** If items were stamped when they were received, would that indicate when they came in?

11:25:02 MR. MOODY: I'm going to object, Judge. When are we talking about? He's only had the evidence for a year and a half.

11:25:07 THE COURT: Can we have a time frame?

11:25:09 MS. BIANCO: Well, Judge, I'm specifically referencing Mr. Dodd and his testimony referenced ZZZ, 11:25:14 his handwritten notes, and in those handwritten notes 11:25:17 he cites exhibits fourteen-hundred to fifteen-hundred 11:25:22 as being turned over to the defense. He also gave 11:25:25 testimony that he believed he wrote this document 11:25:30 before December of --

11:25:33 THE COURT: Before December fourteenth.

11:25:34 MS. BIANCO: December fourteenth. There are 11:25:36 more than a hundred leads that came in after that, 11:25:39 between fourteen-hundred and fifteen-hundred.

11:25:41 THE COURT: Have they come in since he was in 11:25:43 charge of the file?

11:25:44 MS. BIANCO: Well, he's in charge of it now 11:25:45 and they all have stamps on it.

11:25:47 THE COURT: You're trying to infer that he sat 11:25:49 down and looked at the entire file. He already said he 11:25:51 didn't know what happened prior to coming there. I 11:25:54 think he's limited, don't take that the wrong way, to 11:25:57 testify to only how the leads have been dealt with 11:25:58 since he's come into that job. You cannot in any way 11:26:02 infer to this client, to this witness, what happened 11:26:06 and what was done prior to him coming in, Ms. Bianco.

11:26:10 **Q.** Are you familiar with the procedures that when the 11:26:13 leads came in that they were stamped?

11:26:15 MR. MOODY: Objection, Judge.

11:26:16 THE COURT: He's already testified he was not

11:26:18 aware of how the leads were dealt with prior to him
11:26:21 coming into his current position.

11:26:24 **Q.** Do you have leads fourteen-oh-six to fifteen-hundred
11:26:29 in your possession in the Sheriff's Department? Do you
11:26:32 have the originals?

11:26:34 **A.** Yes.

11:26:35 **Q.** And those originals were kept in the ordinary course
11:26:39 of business, correct?

11:26:42 **A.** What do you mean ordinary course?

11:26:44 **Q.** That's part of your job to keep the originals and
11:26:46 file them as a business record, correct?

11:26:48 **A.** Yes.

11:26:48 MS. BIANCO: Your Honor, I would offer
11:26:51 fourteen-oh-seven to fifteen-hundred, not for the truth
11:26:55 of the matter asserted, just for the dates, and I offer
11:26:58 them as the dates received by the Sheriff's Department.

11:27:02 THE COURT: How do you bypass -- how do you
11:27:04 bypass the hearsay?

11:27:05 MS. BIANCO: It's not offered for the truth,
11:27:06 Judge, and it's the stamp, it's a business record kept
11:27:09 in the ordinary course of business.

11:27:10 THE COURT: You didn't lay the proper
11:27:13 foundation first, Ms. Bianco. The proper foundation
11:27:16 would have been since you've taken this job, was this
11:27:19 in the ordinary course of business. He has no personal

11:27:21 knowledge of the ordinary course of business prior to him taking the job. Now you can ask him a series of questions if you want to see if he does have personal knowledge.

11:27:28 MS. PEEBLES: Judge, I think we're all right because we have the master sheet, it's in evidence, it sets forth those leads and the dates so I -- I think that --

11:27:35 THE COURT: I'm going to keep it out.

11:27:38 MS. PEEBLES: -- the Court has that information.

11:27:40 THE COURT: I don't think it falls under the business record exception of this particular witness.

11:27:44 MS. BIANCO: Well, I guess my only problem is that Mr. Dodd gave some testimony that sometimes the leads would come in but they wouldn't be turned over until they were closed.

11:27:54 THE COURT: You had the opportunity to challenge Mr. Dodd when Mr. Dodd was on the witness stand. That's not Mr. Dodd.

11:28:01 MS. BIANCO: So you're rejecting my application to move all of these documents into evidence as not hearsay under the business record exception?

11:28:09 THE COURT: Absolutely. Sustained.

11:28:18 **Q.** Documents that would have been received on January twenty-third, 2015, would that have been during the course of your tenure as the evidence custodian for these documents?

11:28:41 **A.** Yes.

11:28:41 **Q.** Showing you Defendant's Exhibit 154 which is not in evidence --

11:28:58 MS. BIANCO: No, I'm showing him 164, this is not in evidence. This has additional writing from 144.

11:29:05 **Q.** Showing you Defendant's Exhibit 164 and 144, could you take a look at both of those documents and I'll ask you is the information contained on the punch cards identical?

11:29:36 (Whereupon, there was a pause in the proceeding.)

11:29:39 **A.** It would appear as though, yes.

11:29:47 **Q.** Okay, on Exhibit 144 which is in evidence, appears to be a punch card where property was found at the D & W, is that right?

11:30:00 **A.** Correct.

11:30:01 **Q.** Okay, and 164, the only difference with 164 is there's some additional writing outside of the punch card as to when it entered the master file, correct?

11:30:12 **A.** There's writing on it in addition, well, what's not on the 144, yes.

11:30:21 **Q.** Okay, now for 164, you took possession of that

11:30:28 particular piece of evidence in January of 2015, is that
11:30:35 right?

11:30:35 **A.** Yes.

11:30:36 **Q.** Okay, and prior to January fifteen, January of 2015,
11:30:42 that particular document was not in the master file, is
11:30:51 that right?

11:30:51 **A.** I don't believe it was.

11:30:52 MR. MOODY: 164 or is she talking about the
11:30:54 punch card?

11:30:55 MS. BIANCO: I'm talking about the punch card
11:30:57 because there's writing on 164 that says -- I'll offer
11:31:00 164 right now.

11:31:02 MR. MOODY: Can I see --

11:31:03 THE COURT: Have you looked at 164?

11:31:07 MR. MOODY: I just want to look at it.

(Whereupon, there was a pause in the
11:31:30 proceeding).

11:31:30 MR. MOODY: I guess I don't understand the
11:31:31 relevance.

11:31:32 THE COURT: We have 164 already in.

11:31:35 MS. BIANCO: 164 is in?

11:31:37 THE COURT: Yeah.

11:31:37 MS. BIANCO: So I guess we'll call this --

11:31:41 THE COURT: Call it any number you want other
11:31:43 than 164.

11:31:44 MS. BIANCO: What was the last number I have
11:31:46 that you have recorded?

11:31:47 THE COURT: 160 -- what's your last number?

11:31:50 MS. PEEBLES: 165 was the last.

11:31:52 THE COURT: We have 165 in.

11:31:54 MS. PEEBLES: It would have to be 166.

11:31:56 THE COURT: Do you have another 166 though is
11:31:58 my concern.

11:31:59 MS. PEEBLES: No. Well, we may, but we're not
11:32:03 introducing it, Judge.

11:32:03 THE COURT: Okay, 166?

11:32:05 MS. BIANCO: 166.

11:32:06 THE COURT: Change the date.

11:32:09 MS. BIANCO: I got it, 166.

11:32:11 MR. MOODY: Judge, I would object to 166.
11:32:13 I'm not sure what the relevance is. They're the
11:32:14 same punch card and one is just -- because when the
11:32:17 punch card was removed, if I'm reading that right,
11:32:20 when the punch card was removed, they replaced --
11:32:23 because they took the original in the -- in the punch
11:32:25 card file.

11:32:25 THE COURT: You can ask that in the
11:32:28 cross-examination. I'll allow the question.

11:32:34 MS. BIANCO: 166, it says -- are you objecting
11:32:36 to the piece of evidence?

11:32:38 MR. MOODY: I don't understand the relevance I guess.

11:32:40 THE COURT: How's it relevant?

11:32:41 MS. BIANCO: Well, Your Honor, it's relevant to the fact that this document was not part of the investigative file at the time it was alleged to have been distributed to the defense. That's why this extra handwriting is on it. It's --

11:32:54 THE COURT: Well, you have to ask him if that's --

11:32:55 MS. BIANCO: That's what -- he wanted me to explain the relevance. That's why what I want to ask him.

11:33:00 THE COURT: I'll allow it. Mr. Moody can cross-examine as to whether or not she's accurately understanding the handwriting, whatever you want to do.

11:33:06 MS. BIANCO: Is 166 in, Your Honor?

11:33:08 THE COURT: Yes, over Mr. Moody's objection.

(Defendant's Exhibit No. 166 was received in evidence).

11:33:11 **Q.** 166. Could you read the writing on the very top?

11:33:17 **A.** Original removed R.A. Moskal, 01/23, 2015 at sixteen-oh-two to Heidi Allen master file.

11:33:28 **Q.** Okay, the -- that means the original was removed from where the punch card was kept, isn't that right?

11:33:34 **A.** Correct.

11:33:35 **Q.** And that then it was taken and moved to the master file, to the Heidi Allen file, correct?

11:33:40 **A.** Correct.

11:33:40 **Q.** And prior to January of 2015, that document was not in the Heidi Allen file, is that right?

11:33:47 **A.** Correct.

11:33:55 MS. BIANCO: I'm going to return 166 and 144.

11:34:03 MR. OAKES: Your Honor, the 144 that you have, Randi, that's -- that's an extra copy.

11:34:11 MS. BIANCO: We don't know where the 144 is.

11:34:14 MS. PEEBLES: It's up there somewhere.

11:34:16 THE COURT: But during -- are you going to redirect I'm saying.

11:34:19 MR. MOODY: A little bit, Judge.

11:34:20 THE COURT: This time use the 144, Randi, Ms. Bianco, excuse me, has in her hand.

11:34:26 MS. BIANCO: I'll put them right up here.

11:34:28 THE COURT: That's fine.

11:34:36 **Q.** Now I want to talk to you a little bit about Exhibit OO. You're familiar with OO?

11:34:51 **A.** I'd have to look at it again.

11:34:53 **Q.** Certainly.

11:34:53 MS. BIANCO: May I, Your Honor?

11:34:54 THE COURT: Sure.

11:34:56 **Q.** I'd like you to take a look at the back of OO and review to yourself number four. Have you reviewed that?

11:35:13 **A.** I have.

11:35:13 **Q.** And that is evidence regarding Michael Bohrer's whereabouts, is that right?

11:35:21 MR. MOODY: Judge, I'm going to object. The document to the extent that he has any knowledge of what it is is only because he's the evidence custodian. The -- if there was testimony of -- of whoever took that lead or -- or the situation, she's asking -- she's cross-examining him on a document that other than the fact that it's in his -- in his custody --

11:35:41 THE COURT: Custody.

11:35:41 MR. MOODY: -- he doesn't have any knowledge of.

11:35:44 THE COURT: Well, you asked what --

11:35:46 MS. BIANCO: They introduced it, it has to be relevant for some purpose.

11:35:49 THE COURT: Ask him if he has personal knowledge of that outside the fact that he photocopied it.

11:35:54 **Q.** Do you have any personal knowledge of the documents contained in OO?

11:35:57 **A.** I do not.

11:35:57 **Q.** Do you have any personal knowledge of the documents

11:35:59 contained in People's IIII?

11:36:03 **A.** I'd have to see it. I do not.

11:36:17 **Q.** Well, do you know why OO and IIII were photocopied?

11:36:24 **A.** Because Mr. Moody asked me to.

11:36:26 **Q.** Okay, you have no knowledge of the relevance of Mr.
11:36:31 Bohrer's involvement?

11:36:32 MR. MOODY: Objection, Judge. The relevance
11:36:33 is a legal issue. I mean I asked him to photocopy it.
11:36:36 That's --

11:36:37 THE COURT: Sustained.

11:36:40 **Q.** Are you familiar with some of the codes that
11:36:46 Sheriff's Department uses on top of the punch cards?

11:36:50 **A.** Somewhat. They're kind of archaic now and they were
11:36:54 on their way out when I got hired.

11:36:56 **Q.** Do you know what occurrence twenty-three is?

11:37:01 **A.** I do not.

11:37:02 **Q.** Do you know what occurrence 6-D is?

11:37:05 **A.** I do not.

11:37:06 **Q.** Do you know what a signal 46-A is?

11:37:09 **A.** I do not.

11:37:20 MS. BIANCO: May I have a moment, Your Honor?

11:37:22 THE COURT: Of course.

11:37:23 (Whereupon, there was a pause in the
11:38:08 proceeding.)

11:38:08 MS. BIANCO: Judge, I have four punch cards

11:38:11 I'd like to mark so that one -- I guess 167, 68, 69 and 70.

11:38:25 THE COURT: The witness has indicated a very limited knowledge of punch cards.

11:38:28 MS. BIANCO: I understand, Your Honor.

11:38:30 THE COURT: Mark them.

(Defendant's Exhibit No. 167 was marked for identification).

(Defendant's Exhibit No. 168 was marked for identification).

(Defendant's Exhibit No. 169 was marked for identification).

(Defendant's Exhibit No. 170 was marked for identification).

11:38:50 **Q.** I'd like to show you Defendant's Exhibit 168 through 170 and ask you to review them to yourself please.

11:39:00 THE COURT: Number 167?

11:39:02 MS. BIANCO: 167 to 170.

11:39:05 THE COURT: You said 168.

11:39:09 MS. BIANCO: I'm sorry, Judge.

11:39:33 (Whereupon, there was a pause in the proceeding.)

11:39:38 **Q.** Have you had a chance to review those?

11:39:39 **A.** I have.

11:39:40 **Q.** Did Mr. Moody ask you to pull those punch cards?

11:39:42 A. No.

11:39:43 Q. Okay, are you familiar with whether or not those
11:39:46 particular punch cards were in the master file with you at
11:39:51 the time you took it over?

11:39:52 A. I can't say for sure one way or the other.

11:39:58 Q. Well, there's no green mark on the top of any of
11:40:00 those punch cards is there?

11:40:03 A. On these copies?

11:40:04 Q. Right.

11:40:05 A. No.

11:40:06 Q. And you don't know one way or another whether they
11:40:09 were in the master file?

11:40:10 A. I do not.

11:40:11 Q. The master file itself, did it have a lead, a
11:40:18 specific lead for punch cards?

11:40:24 A. Not that I recall.

11:40:27 Q. So if these punch -- the punch cards would have been
11:40:31 in separate leads possibly?

11:40:33 A. Possibly.

11:40:33 MR. MOODY: Objection, Judge. I don't know
11:40:34 what we're -- the witness's basis of knowledge would
11:40:37 come from.

11:40:38 THE COURT: Ask him if he -- he has a basis of
11:40:39 knowledge before you ask that question.

11:40:40 Q. How did you organize the leads when they came in?

11:40:43 **A.** Which leads?

11:40:43 **Q.** The leads for the Heidi Allen case. When you took over the file, how did you organize the leads that came in?

11:40:50 **A.** By date and number off the lead sheet.

11:40:53 **Q.** Okay, and each -- for example, would you take each particular lead and give it -- each particular piece of information and give it a separate lead?

11:41:07 **A.** I'm not sure what you -- every lead would -- if it was one lead, it got one number.

11:41:13 **Q.** Okay, in other words, things like exhibit single F where you have two different dates stamped, that's not the way you did things, correct?

11:41:23 MR. MOODY: Objection, Your Honor. She's asking about a document now and asking him -- it's twenty years old about how he did things. I mean we're --

11:41:29 THE COURT: Sustained.

11:41:32 MS. BIANCO: I don't have anything further, Your Honor, thank you.

11:41:33 THE COURT: Mr. Moody? Where are lead sheets 167 through --

11:41:44 MS. BIANCO: They're not in.

11:41:46 THE COURT: Not in.

11:41:56 MS. BIANCO: I think you have the lead list you have to give back to the Court if --

11:41:59 THE COURT: Sir, could I have that back?
11:42:01 Thank you. Taking back 163.

11:42:10 REDIRECT EXAMINATION

11:42:11 BY MR. MOODY:

11:42:11 **Q.** Were -- when you took over the file, were the leads
11:42:27 sequentially numbered in terms of --

11:42:30 MS. BIANCO: Objection, leading.

11:42:31 THE COURT: Well, I'm confused. In terms of
11:42:33 time frame, the leads, it is a leading question. Set
11:42:36 us a time frame please.

11:42:37 **Q.** When you took over the file, how was the file
11:42:40 organized?

11:42:42 **A.** By number by lead as they came in.

11:42:44 **Q.** Was that your -- was the -- the -- so they would be
11:42:51 sequentially, every envelope had a -- had a lead number?
11:42:54 I'm a little -- I just want to make sure I understand.

11:42:57 **A.** The leads were separated into files like one through
11:43:01 two-hundred and they were in there sequentially.

11:43:04 **Q.** Was -- is that the -- was there -- is there
11:43:08 additional files for other than the lead folders?

11:43:12 **A.** They fell under different headings such as
11:43:14 suspicious person or suspicious vehicle.

11:43:17 **Q.** Within a suspicious person or suspicious -- we'll
11:43:20 start with suspicious persons, what would have been in that
11:43:23 file?

11:43:24 **A.** The lead sheet.

11:43:26 **Q.** The lead sheet?

11:43:26 **A.** Or actually a copy of the lead sheet because the
11:43:30 original would go under the lead itself.

11:43:32 **Q.** And then -- so and within the suspicious persons
11:43:39 file, would there be sub-folders in there?

11:43:41 MS. BIANCO: Objection, Your Honor. He didn't
11:43:44 know -- we don't even know if he's familiar with the
11:43:45 lead.

11:43:46 MR. MOODY: I'm just talking about when he
11:43:47 took it over.

11:43:48 THE COURT: Are you saying what he does or
11:43:49 what was done previously?

11:43:50 MR. MOODY: No, when he took it over, how it
11:43:53 was divided up if he knows.

11:43:54 THE COURT: Ask him if he knows.

11:43:56 MS. BIANCO: Judge, I asked the same question.

11:43:57 THE COURT: Yeah. I'm confused why you think
11:43:59 you can ask it.

11:44:00 MR. MOODY: I'll get away from that topic.

11:44:02 THE COURT: Thank you.

11:44:03 **Q.** Showing you 166, there is some handwriting in there
11:44:11 that's not on the punch card.

11:44:13 **A.** Correct.

11:44:13 **Q.** Who -- who -- whose -- do you recognize that

11:44:16 handwriting?

11:44:17 **A.** Lieutenant Rob Moskal.

11:44:19 **Q.** And how long has Lieutenant Moskal worked with the
11:44:21 Sheriff's Department?

11:44:22 **A.** He's been there sixteen, seventeen years.

11:44:26 **Q.** And you said that punch cards, you described them, I
11:44:30 think the word you used was archaic?

11:44:33 **A.** Correct.

11:44:34 **Q.** How long have you been with the Sheriff's
11:44:35 Department?

11:44:35 **A.** Since 2002.

11:44:36 **Q.** And were punch cards being used in 2002?

11:44:39 **A.** Not for complaints.

11:44:41 **Q.** Not for what?

11:44:42 **A.** Complaints.

11:44:43 **Q.** Oh, not for complaints, okay. What were they being
11:44:46 used for do you know then at that 2002?

11:44:49 **A.** Well, they -- specific complaints, if there was a
11:44:51 murder or suicide or something, very specific complaints,
11:44:54 they would be punched.

11:44:55 **Q.** What -- what had taken the place of punch cards?

11:44:59 **A.** The 911 Center.

11:45:01 **Q.** And the handwriting indicates that the -- the
11:45:11 original was removed. Where are the punch cards kept if
11:45:15 you know?

11:45:15 **A.** In a room that's considered archives at this time.

11:45:19 **Q.** Archives, and if you know, how many punch cards are in that room?

11:45:25 **A.** Tens of thousands.

11:45:26 **Q.** Tens of thousands.

11:45:31 THE COURT: Where are you going, Mr. Moody?

11:45:33 MR. MOODY: He answered it. I just realized the question was asked. I have nothing further, Judge.

11:45:48 MS. BIANCO: Nothing, Your Honor, thank you.

11:45:49 THE COURT: Sir, you can step down. It is now quarter to twelve. Back at one o'clock? Okay. Have your witnesses ready at one. I'll charge that. Thanks.

01:00:37 (Whereupon, there was a recess).

01:00:37 THE COURT: Okay, your next witness?

01:00:40 MR. OAKES: Your Honor, the People call Lance Mason.

01:00:42 THE COURT: Lance Mason.

01:00:44 MR. OAKES: Yes, sir.

01:01:22 THE CLERK: Right up here. Raise your right hand, put your left on the Bible.

LANCE MASON, Called as a witness, having been duly sworn, was examined and testified as follows:

01:01:37 THE CLERK: Please state your name for the record.

01:01:40 THE WITNESS: Lance Mason.

01:01:41 THE CLERK: Spell your last name.

01:01:43 THE WITNESS: M-A-S-O-N.

01:01:45 THE CLERK: Have a seat please.

01:01:46 THE COURT: Mr. Mason, before Mr. Oakes asks
01:01:48 you any questions, I'm going to ask you whether or not
01:01:50 you consent to have your testimony audio and
01:01:54 videotaped.

01:01:54 THE WITNESS: Yes.

01:01:55 THE COURT: You do consent, thank you. Mr.
01:01:59 Oakes, your witness.

01:01:59 MR. OAKES: Thank you.

DIRECT EXAMINATION

01:02:00 BY MR. OAKES:

01:02:01 **Q.** Good afternoon, Mr. Mason.

01:02:02 **A.** Good afternoon.

01:02:03 **Q.** Can you please tell the Court where you live?

01:02:05 **A.** I live in Theresa, New York.

01:02:08 **Q.** And are you employed, sir?

01:02:09 **A.** I'm retired.

01:02:10 **Q.** Where are you retired from?

01:02:12 **A.** New York State Department of Correctional Services.

01:02:14 **Q.** And how long did you work for the New York State
01:02:18 Department of Correctional Services?

01:02:19 **A.** Twenty-six years.

01:02:20 **Q.** And when did you retire?

01:02:21 **A.** 2007.

01:02:23 **Q.** What was your position with the Department of
01:02:27 Corrections?

01:02:27 **A.** Deputy superintendent for security services.

01:02:29 **Q.** Is that the position you retired from?

01:02:31 **A.** Yes, sir.

01:02:32 **Q.** How long were you in that position?

01:02:33 **A.** Fifteen years.

01:02:34 **Q.** Are you familiar with a club or organization called
01:02:40 Vicious Circle?

01:02:41 **A.** Yes, I am.

01:02:42 **Q.** Can you please tell the Court what Vicious Circle
01:02:45 is?

01:02:45 **A.** Vicious Circle is no longer in existence. It was a
01:02:49 motorcycle club.

01:02:50 **Q.** And what was your association with the motorcycle
01:02:53 club?

01:02:53 **A.** I was the founder of the club.

01:02:56 **Q.** And when did -- when was that organization founded?

01:02:58 **A.** Approximately 2000.

01:03:01 **Q.** And where was the initial chapter of Vicious Circle
01:03:08 formed?

01:03:08 **A.** Adams Center, New York.

01:03:10 **Q.** And outside of that original chapter, were there

01:03:13 additional chapters added at some later point?

01:03:16 **A.** Yes, there was.

01:03:16 **Q.** And where were those?

01:03:17 **A.** Carthage, New York; Oswego, New York; Rome, New
01:03:27 York; and Syracuse, New York.

01:03:29 **Q.** If you recall, when was the Oswego County or Oswego
01:03:33 chapter of Vicious Circle formed?

01:03:36 **A.** 2003, 2004, somewhere in that time frame.

01:03:47 **Q.** That's your best approximation?

01:03:49 **A.** Best I can remember.

01:03:50 **Q.** But the motorcycle club Vicious Circle wasn't
01:03:54 formed, the original chapter, until 2000 or thereabouts?

01:03:57 **A.** Thereabouts, 2000, yes.

01:03:59 **Q.** Do you know an individual -- while you were
01:04:03 associated with Vicious Circle, did you know a person by
01:04:06 the name of Michael Bohrer?

01:04:07 **A.** I did not, no.

01:04:08 **Q.** Do you know him today?

01:04:10 **A.** I do not.

01:04:10 **Q.** At the time that you were with Vicious Circle or
01:04:16 today, do you know a person by the name of Roger
01:04:18 Breckenridge?

01:04:18 **A.** I do not.

01:04:19 **Q.** During the time that you were with Vicious Circle
01:04:21 and up to today, do you know a person by the name of James

01:04:24 Thumper Steen?

01:04:25 **A.** No, I do not.

01:04:26 **Q.** Thank you very much, Mr. Mason.

01:04:33 THE COURT: Give me a second please.

01:04:35 (Whereupon, there was a pause in the proceeding.)

01:04:50 THE COURT: Ms. Peebles. Thank you.

CROSS-EXAMIATION

01:04:51 BY MS. PEEBLES:

01:04:51 **Q.** Just a couple questions, Mr. Mason.

01:04:53 **A.** Sure.

01:04:54 **Q.** Do you know an individual by the name of Brian

01:04:57 Mensch?

01:04:57 **A.** I do know him, yes.

01:04:59 **Q.** And he was part of Vicious Circle?

01:05:01 **A.** He was, yes.

01:05:01 **Q.** And are you familiar with a place called Champs

01:05:04 Corners?

01:05:04 **A.** Yes.

01:05:05 **Q.** And did you hang out at Champs Corners?

01:05:08 **A.** Did I hang out there? No, I did not hang out there.

01:05:12 **Q.** Had you ever been there?

01:05:13 **A.** Yes, I had, yes.

01:05:14 **Q.** Do you remember when?

01:05:15 **A.** The last time I was there?

01:05:16 **Q.** The last time you were there.
01:05:17 **A.** I believe it's not called Champs Corners any more,
01:05:19 it's called JP's.
01:05:21 **Q.** Well, why don't we talk about when it was called
01:05:25 Champs Corners. Were you there when it was called Champs
01:05:28 Corners?
01:05:28 **A.** Yes, I -- yes, I'm sure I was.
01:05:33 **Q.** Was that the early nineties?
01:05:33 **A.** The early nineties? No.
01:05:35 **Q.** When was it called Champs Corners as far as you
01:05:41 recall?
01:05:41 **A.** Late nineties possibly?
01:05:48 **Q.** Did you ever associate with Brian Mensch?
01:05:53 **A.** Yes.
01:05:53 **Q.** And where would you associate with Brian Mensch?
01:05:57 **A.** He's a member of the motorcycle club Vicious Circle.
01:06:01 **Q.** Okay. Now, do you know an individual by the name of
01:06:03 Jay McGuillicuddy?
01:06:05 **A.** No, I do not.
01:06:07 **Q.** When you were part of Vicious Circle, did you have
01:06:09 chapter meetings at a bowling alley in Mexico?
01:06:13 **A.** My chapter did not, no.
01:06:15 **Q.** Where was your chapter?
01:06:17 **A.** Out of Adams Center, New York.
01:06:18 **Q.** Oh, okay, so you weren't even affiliated with the

01:06:21 chapter out of Oswego?

01:06:23 **A.** No. Each chapter was autonomous to itself.

01:06:25 **Q.** So you wouldn't have been involved in the meeting if
01:06:29 they were meeting at McGuillicuddy's in Mexico, that was
01:06:32 not your chapter?

01:06:33 **A.** No, I would not have been.

01:06:35 **Q.** Now there's an individual that was the president at
01:06:37 one point named Dan Barney. Do you know who he is?

01:06:38 **A.** I do know Dan.

01:06:40 **Q.** And Dan was out of the Mexico chapter?

01:06:42 **A.** The Oswego chapter, yes.

01:06:43 **Q.** Oswego chapter? And would you ever have joint
01:06:46 meetings with the various chapters from around the area?

01:06:48 **A.** They would come out to our meeting at some points.
01:06:51 We were the mother chapter.

01:06:52 **Q.** But you never heard of an individual by the name of
01:06:56 Jay McGuillicuddy, that name doesn't sound familiar to you?

01:07:00 **A.** That does not sound familiar, ma'am, no.

01:07:01 **Q.** Thank you very much.

01:07:03 THE COURT: Mr. Oakes?

01:07:05 REDIRECT EXAMINATION

01:07:05 BY MR. OAKES:

01:07:06 **Q.** Mr. Mason, again, when was the Vicious Circle
01:07:10 motorcycle gang, or motorcycle club first formed?

01:07:11 **A.** Approximately 2000.

01:07:13 **Q.** And the Oswego chapter was formed when?
01:07:16 **A.** I'm going by memory here. A few years later, 2000,
01:07:20 2003.
01:07:21 MS. PEEBLES: Asked and answered, Judge.
01:07:23 THE COURT: Sustained.
01:07:24 MR. OAKES: No further questions, Your Honor.
01:07:25 THE COURT: Anything else?
01:07:26 MS. PEEBLES: No.
01:07:27 THE COURT: You can step down, sir. Thank
01:07:28 you.
01:07:28 THE WITNESS: Thank you.
01:07:29 THE COURT: Next witness?
01:07:30 MR. OAKES: Jeremy Powers. Mr. Mason, you're
01:07:34 free to go all together, sir.
01:07:36 THE WITNESS: Okay, thank you, sir.
THE COURT: Jeremy Powers?
01:08:24 MR. OAKES: Yes, Your Honor.
01:08:24 THE COURT: Stand up, sir.
01:08:26 THE CLERK: Raise your right hand, put your
01:08:28 left on the Bible.
JEREMY POWERS, Called as a witness, having been
01:08:34 duly sworn, was examined and testified as follows:
01:08:34 THE CLERK: Please state your name for the
01:08:37 record.
01:08:37 THE WITNESS: Jeremy Powers.

01:08:38 THE CLERK: Spell your first name.

01:08:39 THE WITNESS: J-E-R-E-M-Y.

01:08:43 THE CLERK: And your last name.

01:08:44 THE WITNESS: P-O-W-E-R-S.

01:08:48 THE CLERK: Have a seat please.

01:08:49 THE COURT: Mr. Powers, before you answer any
01:08:51 questions from Mr. Oakes, I'm going to ask you whether
01:08:54 or not you consent to have your testimony video and
01:08:56 audio taped.

01:08:57 THE WITNESS: No, I don't.

01:08:58 THE COURT: Thank you. Mr. Oakes, your
01:09:01 witness.

01:09:01 MR. OAKES: Thank you very much, Your Honor.

DIRECT EXAMINATION

01:09:03 BY MR. OAKES:

01:09:03 **Q.** Good afternoon, Mr. Powers.

01:09:04 **A.** Good afternoon.

01:09:05 **Q.** Are you married, sir?

01:09:06 **A.** Yes.

01:09:07 **Q.** Who are you married to?

01:09:08 **A.** Nicole Powers.

01:09:10 **Q.** And how long have you and Nicole been married?

01:09:13 **A.** Ten years.

01:09:14 **Q.** And where do you live?

01:09:16 **A.** 2803 U.S. Route 11, Parish, New York.

01:09:20 **Q.** And is that in the Parish township or Mexico
01:09:24 township?

01:09:25 **A.** Mexico.

01:09:26 **Q.** Okay, are you employed?

01:09:28 **A.** Yes.

01:09:29 **Q.** Where are you employed?

01:09:30 **A.** I work for Sevenson Environmental at the Onondaga
01:09:36 Lake cleanup.

01:09:38 **Q.** And what type of work do you do for that company?

01:09:39 **A.** I run heavy equipment and most of the time out on a
01:09:43 boat.

01:09:44 **Q.** And what type of heavy equipment do you run?

01:09:47 **A.** Excavator, bulldozer, loader.

01:09:51 **Q.** And how long have you been in the profession of
01:09:54 operating excavators, bulldozers, heavy equipment?

01:09:58 **A.** Eleven years.

01:10:00 **Q.** Mr. Powers, I'm going to direct your attention to
01:10:02 the day of Thursday, July twenty-fourth, 2014. Do you
01:10:07 remember that day?

01:10:07 **A.** Yes.

01:10:08 **Q.** And on that day did you get a call from your wife
01:10:12 Nicole?

01:10:13 **A.** Yes.

01:10:13 **Q.** And I don't want you to tell us what you and Nicole
01:10:16 talked about, but generally did you guys have a

01:10:19 conversation at that time?

01:10:20 **A.** Yes, about across the street from our house on the
01:10:26 news.

01:10:26 MS. BIANCO: Objection to the nature of the
01:10:28 conversation, specifically what was said, hearsay.

01:10:30 MR. OAKES: I was just asking about the topic,
01:10:32 not what she said but the topic generally.

01:10:34 THE COURT: Ask it based upon his
01:10:35 conversation, what do you think the topic was. That
01:10:38 would avoid it.

01:10:39 **Q.** Based upon your conversation, what was the topic?

01:10:42 **A.** The news -- about the news of Heidi Allen, just they
01:10:49 were looking at a cabin in our area.

01:10:52 MS. BIANCO: Objection to what the news said.

01:10:53 THE COURT: Excuse me?

01:10:54 MS. BIANCO: Objection to what the news was
01:10:56 referencing.

01:10:57 MR. OAKES: Your Honor, it's being offered for
01:10:59 foundational purposes.

01:11:00 THE COURT: I'll allow it for foundational
01:11:02 purposes.

01:11:02 **Q.** Now Mr. Powers, you were at work when you got a call
01:11:05 from Nicole at that time?

01:11:06 **A.** Um hum, yes.

01:11:07 **Q.** At some point did you come home from work that day?

01:11:09 **A.** Yes.

01:11:10 **Q.** What time was that, ballpark?

01:11:12 **A.** Almost eight o'clock.

01:11:14 **Q.** Eight o'clock in the evening?

01:11:16 **A.** Um hum.

01:11:16 **Q.** And when you got home, what did you do?

01:11:19 **A.** Sat down, had dinner, and then we walked across the
01:11:27 street.

01:11:27 **Q.** Okay. Now, what -- what street do you live on?

01:11:30 **A.** U.S. Route 11.

01:11:32 **Q.** And when you said you walked down the street, what
01:11:35 road are you referring to?

01:11:36 **A.** Down Rice Road.

01:11:38 **Q.** Also in the Town of Mexico?

01:11:40 **A.** Yes.

01:11:40 **Q.** And why were you walking down Rice Road?

01:11:44 **A.** To just to go in the woods and look to see if there
01:11:49 was a cabin in the woods.

01:11:50 **Q.** Why were you doing that?

01:11:52 **A.** To investigate, sort of just pick around what was in
01:12:01 the cabin 'cause of what we heard in the news.

01:12:03 **Q.** And I guess that's the question I was getting at.
01:12:06 Because of what you heard in the news, that's what prompted
01:12:08 you to go into that location?

01:12:10 **A.** Yes, that's correct.

01:12:11 **Q.** And ultimately did you go to a particular location
01:12:13 in the woods?

01:12:14 **A.** Yes.

01:12:14 **Q.** And where was that?

01:12:15 **A.** About a half a mile down on Rice Road on the south
01:12:21 side of Rice Road.

01:12:23 **Q.** And who was with you at that time?

01:12:25 **A.** My wife.

01:12:26 **Q.** Anybody else?

01:12:28 **A.** No.

01:12:28 **Q.** And did you eventually find a location of interest
01:12:33 in the wooded area?

01:12:34 **A.** Yes.

01:12:34 **Q.** And can you describe that area for the Court?

01:12:36 **A.** It was all falling down, caved in, about twenty feet
01:12:42 off a little creek bed. Just all rotted out, roof was
01:12:48 caved in and everything. You could barely tell it was a
01:12:51 building.

01:12:51 **Q.** Okay, did you know who had owned it and who had
01:12:55 built that structure at one point?

01:12:57 **A.** At the time, no, I did not.

01:12:58 **Q.** Okay, and when you saw this I guess former
01:13:03 structure, this collapsed building, what did you and your
01:13:06 wife do?

01:13:07 **A.** We just tipped over the roof, you know, that was

01:13:11 collapsed and just picked around a little bit. We were
01:13:14 there just a little while.

01:13:15 **Q.** And when you say a little bit, approximately how
01:13:18 long were you in the woods moving items from that site?

01:13:21 **A.** About a half-hour because daylight was running out.

01:13:25 **Q.** And was there anything in particular that you were
01:13:28 looking for at that time?

01:13:29 **A.** No, just picking around, just seeing if there's any
01:13:32 sort of evidence of like loose gravel from people digging
01:13:36 around or anything.

01:13:37 **Q.** And did you see any evidence of loose gravel?

01:13:40 **A.** No, I did not.

01:13:41 **Q.** Did you or your wife remove anything from that site
01:13:50 at that time?

01:13:50 **A.** No.

01:13:52 **Q.** So you left that evening, that was Thursday, July
01:13:58 twenty-fourth. Did you have an occasion to go back to that
01:14:00 site or that location?

01:14:02 **A.** Sunday I believe we went back.

01:14:05 **Q.** Okay, so that would be Sunday the twenty-seventh
01:14:09 then?

01:14:09 **A.** Yes.

01:14:10 **Q.** And who went back on Sunday?

01:14:12 **A.** Just me and my wife once again.

01:14:15 **Q.** For what purpose?

01:14:16 **A.** That time I brought a shovel because there was like a concrete floor, and I just picked at that a little bit, and we were there for just a little while, maybe an hour, and that's it.

01:14:30 **Q.** What time, ballpark, did you go over that Sunday?

01:14:35 **A.** I think -- I believe it was around noon or eleven o'clock.

01:14:38 **Q.** And what if anything did you see of significance while you were poking around for the hour?

01:14:46 **A.** Nothing.

01:14:46 **Q.** Was there something in particular you were looking for?

01:14:50 **A.** Just evidence of people picking around, you know, different, you know, disturbance in the soil, but it was all native material, there was nothing changed at all, you know.

01:15:03 **Q.** And when you say native material, can you explain what you mean, Jeremy?

01:15:07 **A.** Just through digging with equipment and stuff I can tell with a shovel the difference. Like if someone was to dig a hole it would be softer, the material would be flipped over, you could just tell.

01:15:18 **Q.** And looking at the ground, I guess it would be just east of where the structure had been, did you see any disturbance in the ground there?

01:15:27 **A.** No.

01:15:27 **Q.** And when you returned to the site on Sunday, was it in the same condition as it was when you had left on Thursday?

01:15:36 **A.** Yes.

01:15:36 **Q.** And did you see any evidence of anything else being moved or disturbed in the three days since you had been there?

01:15:43 **A.** No.

01:15:44 **Q.** And on that Sunday, after the hour, what if anything did you and Nicole take with you? Did you take anything with you?

01:15:53 **A.** From the site?

01:15:54 **Q.** From the site.

01:15:55 **A.** Nothing, no.

01:15:56 **Q.** And Jeremy, you talked about looked like a structure had been there at one point. As you were pulling items back away from that, what were you doing with those items?

01:16:17 **A.** Just pulling them back into a pile just away from the footprint of the building.

01:16:34 MR. OAKES: Thank you, Your Honor. No other questions.

01:16:37 THE COURT: Ms. Bianco or Ms. Peebles. Just give me a second, Ms. Bianco, please.

01:16:45 (Whereupon, there was a pause in the

01:16:52 proceeding.)
01:16:52 MS. BIANCO: Your Honor, if I can just pull up
01:16:54 some pictures.
01:16:55 THE COURT: Absolutely. I'm all set. Mr.
01:17:20 Oakes, Mr. Moody, you know they're going to use photos
01:17:24 that are already in evidence, but to expedite the
01:17:27 matter, if they have their copies can they use their
01:17:30 copies?
01:17:30 MR. OAKES: Absolutely fine, Your Honor.
01:17:31 THE COURT: Mr. Moody, any problems with that?
01:17:33 MR. MOODY: No.
01:17:34 MR. OAKES: I don't care if he does.
01:17:36 THE COURT: He's the boss.
01:17:39 MR. OAKES: Thank you.
01:17:42 THE COURT: Is that quicker that way, Ms.
01:17:44 Peebles, Ms. Bianco?
01:17:46 MS. PEEBLES: Yes. Let me see that. 66-A
01:17:54 through F.
01:17:59 THE COURT: Can you confirm 66-A through F?
01:18:02 MS. PEEBLES: There were several different
01:18:04 pictures that were introduced. I want to make sure
01:18:06 those are the correct ones.
01:18:09 THE CLERK: Yeah, they're all in.
01:18:10 THE COURT: A through F are in.

CROSS-EXAMINATION

01:18:12 BY MS. BIANCO:

01:18:14 **Q.** Good afternoon, Mr. Powers.

01:18:15 **A.** Good afternoon.

01:18:15 **Q.** I believe you stated you got out of work on that
01:18:18 Thursday at seven p.m., correct?

01:18:21 **A.** I get out at 6:30. Probably get home almost eight
01:18:24 o'clock, 7:45.

01:18:26 **Q.** When you got home, you testified you ate dinner?

01:18:30 **A.** Yes.

01:18:30 **Q.** And approximately how long did that take?

01:18:33 **A.** Probably just a quick ten, fifteen-minute dinner.

01:18:37 **Q.** And then you walked half a mile into the Rice Road
01:18:42 area, correct?

01:18:42 **A.** Yes.

01:18:43 **Q.** Would you agree it was -- so at this point it would
01:18:47 at least have been -- how long would it take you to walk a
01:18:49 half a mile?

01:18:50 **A.** Maybe ten minutes at the most.

01:18:54 **Q.** Okay, so ten minutes for the walk, ten minutes for
01:18:59 the dinner.

01:19:00 **A.** Um hum.

01:19:00 **Q.** Was there any cleanup after the dinner?

01:19:04 **A.** Yeah. I might have actually gotten home a little
01:19:07 bit earlier, but 'cause some nights I get home at like
01:19:12 7:15, 7:30-ish.

01:19:18 Q. At the time you were out walking in the woods, would you agree it was getting -- it was dusk at this point?

01:19:23 A. Yes.

01:19:23 Q. Did you have a flashlight with you?

01:19:25 A. No.

01:19:26 Q. And I believe you stated that you were out there for thirty minutes that Thursday night?

01:19:32 A. Yes.

01:19:33 Q. Could it have been a little less than that?

01:19:35 A. It could have been because of the, you know, running out of daylight but --

01:19:39 Q. And when you were there that Thursday night, would you agree that you just -- I think you said you just picked around a little bit?

01:19:49 A. Um hum, that's correct.

01:19:50 Q. So you didn't have a shovel with you at that time, correct?

01:19:53 A. No.

01:19:53 Q. And you really didn't displace anything there that night did you?

01:19:58 A. No.

01:19:58 Q. When you say picked around, are you just saying like lifting something up, putting it down?

01:20:04 A. Yeah, the debris, the roof and what not, it was rotted out.

01:20:07 **Q.** Okay, so you wouldn't have moved anything that Thursday night?

01:20:11 **A.** No.

01:20:12 **Q.** And when you went back on Sunday, you stated you were there for about an hour?

01:20:19 **A.** Yeah.

01:20:20 **Q.** Okay, and you kicked some more stuff around?

01:20:24 **A.** Yes.

01:20:24 **Q.** Just picked a little bit?

01:20:26 **A.** Um hum.

01:20:27 **Q.** So you weren't like ripping up the scene were you?

01:20:32 **A.** No, no.

01:20:33 **Q.** You had brought a shovel with you, right?

01:20:36 **A.** Yes.

01:20:36 **Q.** And that was just to -- just to lift up a few items?

01:20:40 **A.** Yeah because it was just so heavy you couldn't pick it up by yourself.

01:20:43 **Q.** And you weren't throwing the items in piles of dirt were you?

01:20:47 **A.** No.

01:20:48 **Q.** I'd like to show you what's been marked 66-A. Do you recognize that area, sir?

01:20:59 **A.** Yes, I do.

01:21:00 **Q.** Okay, did you make that area into that mess?

01:21:04 **A.** Yes.

01:21:05 **Q.** So that was your picking around just a little bit?

01:21:08 **A.** Um hum.

01:21:09 **Q.** Showing 66-B, do you recognize that?

01:21:17 **A.** Yes.

01:21:21 **Q.** Okay, and how large would you describe that area?

01:21:24 **A.** Probably ten foot by fifteen foot long maybe.

01:21:30 **Q.** Okay, and you didn't dig out ten by fifteen foot did you?

01:21:35 **A.** No.

01:21:36 **Q.** Okay, so would you agree that that area was disturbed in a way that you didn't do?

01:21:43 MR. OAKES: Objection. I guess I'm --

01:21:44 **A.** No.

01:21:45 THE COURT: What's your objection, Mr. Oakes?

01:21:46 MR. OAKES: I guess I'm unclear of the question.

01:21:48 THE COURT: No, go ahead, answer the question.

01:21:50 **A.** No, it looks like what I dug out. It doesn't look any different than --

01:21:56 **Q.** So you dug out an area ten by fifteen feet?

01:21:59 **A.** Yeah, but that's -- that area all had debris over it and I believe it was dug out previously like from the person building the building.

01:22:09 **Q.** Okay, so it had previously been disturbed before you got there?

01:22:14 **A.** No, when it was built.

01:22:15 **Q.** Well, there was -- did you dig out ten by fifteen
01:22:20 feet?

01:22:20 **A.** No, I picked in little different spots that felt
01:22:24 soft.

01:22:25 **Q.** Showing you 66-C, do you recognize that?

01:22:35 **A.** Yes.

01:22:40 **Q.** And how -- how big would you describe that area?

01:22:44 **A.** It's kind of hard to tell in the picture, it's kind
01:22:54 of -- I don't know, 'cause it's got the refrigerator
01:22:57 right -- I don't know.

01:23:01 **Q.** Well, did you dig up that entire area in 66-C or was
01:23:07 some of that already dug up?

01:23:08 **A.** No, that -- that's the area I dug up.

01:23:11 **Q.** That entire area?

01:23:12 **A.** Yep.

01:23:13 MR. OAKES: Objection, Your Honor. And I
01:23:15 guess I think there might be distinction when the
01:23:18 witness is saying dug up, I think he's talking about a
01:23:21 footprint of the structure as opposed to being dug up.

01:23:24 THE COURT: That's for cross-examination.

01:23:26 MR. OAKES: Okay.

01:23:27 THE COURT: Clarification.

01:23:27 **Q.** Did you lift the topsoil up in that entire area?

01:23:31 **A.** Yes.

01:23:32 **Q.** Okay, so that was more than just picking at it, would you agree?

01:23:35 **A.** Um hum.

01:23:36 **Q.** That would be yes?

01:23:37 **A.** Yes.

01:23:37 **Q.** Okay, so if there was some -- something -- when you -- when you picked at the area, did you examine the soil closely as to what you were picking at?

01:23:48 **A.** Yes.

01:23:49 **Q.** Okay, did you collect any of the samples?

01:23:52 **A.** No, I did not.

01:23:53 **Q.** Okay, and you -- you picked at that area you said for about an hour?

01:23:56 **A.** Yes.

01:23:57 **Q.** And when you shoveled, did someone go down each time, either you or your wife, to look inside to see what was in the shovel?

01:24:06 **A.** Yes.

01:24:06 **Q.** Okay, and did you take any of that with you?

01:24:09 **A.** No, I did not.

01:24:11 **Q.** Prior to going there in July had you ever been to that cabin before?

01:24:18 **A.** No, I have not.

01:24:19 **Q.** Okay, so you don't know what condition it was in before you had gotten there, before you got there?

01:24:26 **A.** Yes, that's correct.

01:24:29 **Q.** When you went there on the Thursday, you went there
01:24:44 because of something your wife heard on the news?

01:24:47 **A.** Yes.

01:24:47 **Q.** And then you were not sure if you heard that -- that
01:24:53 there was some more activity on the news about someone
01:24:56 digging this up on Thursday?

01:24:58 **A.** No. It was after the fact that we were there, both
01:25:02 times is when we heard on the news that someone was there.

01:25:15 MS. BIANCO: May I have a moment, Your Honor?

01:25:17 THE COURT: Absolutely.

01:25:19 (Whereupon, there was a pause in the
01:25:23 proceeding.)

01:25:23 **Q.** Did you receive a call on that Sunday before you dug
01:25:30 up stating that somebody was digging up the cabin and you
01:25:34 thought you were going to be in trouble?

01:25:36 **A.** No.

01:25:37 **Q.** Did you give a sworn statement dated July
01:25:42 twenty-nine, 2014?

01:25:43 **A.** Yes.

01:25:43 **Q.** Okay.

01:25:45 THE COURT: What's the date, July
01:25:46 twenty-ninth?

01:25:48 MS. BIANCO: Pardon?

01:25:49 THE COURT: July twenty-ninth?

01:25:50 **Q.** July twenty-ninth?

01:25:53 **A.** Um hum.

01:25:53 **Q.** Did you state -- and that statement was under oath, correct?

01:25:59 **A.** Yes.

01:26:00 **Q.** Did you state, "On Sunday I was at my neighbor's and Nicole called me and said the news had mentioned someone was out digging around the cabin. We thought we were going to be in trouble because we knew it was us and we had decided to walk back out and around noon Sunday to see if anyone else had been back there and kick some more stuff around." Did you say that?

01:26:23 **A.** If it's in the statement, yes.

01:26:25 **Q.** Okay, so when you went back the second time, you thought you were going to be in trouble for digging it up the first time?

01:26:32 **A.** No, that's not correct. They -- that wasn't written down the correct way.

01:26:38 **Q.** So they misstated your words?

01:26:40 **A.** Yes. We were there, and then she called me after the fact on Sunday afternoon. We were there like eleven Sunday and then she called me at like three, four o'clock Sunday afternoon and was stating that it was on the news someone was picking around in the cabin.

01:26:56 **Q.** Did you have an opportunity to review your statement

01:26:58 before you signed it?

01:26:59 **A.** Yes. I must have totally overlooked it.

01:27:02 **Q.** Okay, and you didn't handwrite this, this was
01:27:06 somebody else?

01:27:06 **A.** No, someone else wrote it, yes.

01:27:08 **Q.** And you're saying this is inaccurate.

01:27:09 **A.** Yes.

01:27:11 MS. BIANCO: No further questions. Oh, hold
01:27:13 on a minute, Your Honor.

01:27:14 THE COURT: Sure.

01:27:14 (Whereupon, there was a pause in the
01:27:22 proceeding.)

01:27:22 **Q.** When you were digging out the area on Sunday, were
01:27:27 you digging up the soil and throwing the soil to the side?

01:27:30 **A.** No, it was -- the soil stayed where it was at.

01:27:33 **Q.** Did you pick up the soil at all?

01:27:35 **A.** Yeah. I used like the shovel like a pry bar and
01:27:38 picked it up and was looking underneath the soil.

01:27:42 **Q.** Okay, and every single soil you picked up you looked
01:27:45 at?

01:27:45 **A.** Um hum.

01:27:46 **Q.** Right?

01:27:46 **A.** Yes.

01:27:47 **Q.** And that for the fifteen to twenty feet, I'm sorry,
01:27:50 was that what you said it was approximately that you dug

01:27:53 up?

01:27:53 **A.** Yes.

01:27:53 **Q.** And that only took you an hour?

01:27:55 **A.** Um hum, yes.

01:27:59 MS. BIANCO: No further questions.

01:28:00 THE COURT: Redirect?

01:28:02 MR. OAKES: Thank you, Your Honor.

01:28:03 REDIRECT EXAMINATION

01:28:03 BY MR. OAKES:

01:28:04 **Q.** Mr. Powers, you told Attorney Bianco you had never
01:28:35 been to that structure before. How were you aware of that
01:28:39 structure being there?

01:28:41 **A.** I've seen it when I was hunting but I've never been
01:28:44 to the structure itself.

01:28:45 **Q.** Okay, and Ms. Bianco was asking you some questions
01:28:49 about the ground I guess within the footprint of the
01:28:53 structure. If I say the footprint of the structure, do you
01:28:57 know what I mean?

01:28:58 **A.** Yes.

01:28:58 **Q.** And when you talk about the ground inside of that
01:29:00 footprint being dug up before you got there, what do you
01:29:03 mean by that?

01:29:03 **A.** Just while they built it, whoever built it, dug it
01:29:07 so it was level when they built on it so the floor wasn't
01:29:10 all over the place.

01:29:11 MS. PEEBLES: Objection.

01:29:13 MS. BIANCO: The basis of his knowledge, what
01:29:17 someone did X amount of years earlier.

01:29:19 THE COURT: What he observed.

01:29:19 MS. BIANCO: He's explaining what he meant by
01:29:22 the term --

01:29:24 THE COURT: Based on his observation.

01:29:26 MR. OAKES: Right.

01:29:26 THE COURT: That's fine. You weren't there
01:29:33 when they built it, right, sir?

01:29:33 THE WITNESS: No.

01:29:34 **Q.** So when you say -- when you use that term it looked
01:29:37 like it had been dug up before you got there, you're
01:29:40 referring to your I guess presumption that somebody had
01:29:44 leveled the ground?

01:29:45 **A.** Yes.

01:29:45 **Q.** When they built the structure?

01:29:46 **A.** Correct.

01:29:47 **Q.** When you were there on either of those days, either
01:29:50 on Thursday, did you see any evidence that somebody had
01:29:54 recently been digging with a spade, a pickax, something
01:29:58 within that footprint?

01:30:00 **A.** No.

01:30:00 **Q.** And when you went back on Sunday, did you see any
01:30:04 evidence of anybody other than yourself having dug up the

01:30:07 area within that footprint with a spade, pickax, anything
01:30:10 like that?

01:30:11 MS. BIANCO: Objection to the leading nature
01:30:13 of these questions, Judge.

01:30:14 THE COURT: I'll sustain.

01:30:15 **Q.** What -- what if any evidence did you see on Sunday
01:30:27 that somebody had been there tearing up the ground with a
01:30:31 pickax or shovel?

01:30:32 **A.** No, there was no evidence of -- no footprints,
01:30:34 anything.

01:30:35 **Q.** And when you went back on Sunday, that area was in
01:30:41 the same condition as it was when you left on Thursday?

01:30:43 **A.** Yes.

01:30:44 MR. OAKES: No further questions, Your Honor.

01:30:45 THE COURT: Ms. Bianco?

01:30:47 MS. BIANCO: I just have one followup. I
01:30:50 probably don't need the mike for that.

RECROSS-EXAMINATION

01:30:52 BY MS. BIANCO:

01:30:52 **Q.** What time did you leave on Sunday?

01:30:54 **A.** Around twelve, 12:15.

01:30:56 **Q.** Okay, and when you left at 12:15, how did you exit
01:31:00 that area?

01:31:02 **A.** Went back over the creek and headed north towards
01:31:08 Rice Road.

01:31:08 **Q.** Is there any reason you left at 12:15 in particular?

01:31:12 **A.** No.

01:31:16 **Q.** What was the status of the ground you were walking
01:31:19 on? Was it hard?

01:31:19 **A.** No, it was soft.

01:31:22 MS. BIANCO: No further questions.

01:31:24 THE COURT: Mr. Oakes?

01:31:25 MR. OAKES: No, thank you, Your Honor.

01:31:26 THE COURT: Sir, you're all set. You can go.
01:31:28 Next witness?

01:31:28 MR. OAKES: Nicole Powers.

01:31:51 THE COURT: Actually, Ms. Bianco, these are
01:31:54 your photos.

01:31:55 MS. BIANCO: Thank you, Your Honor.

01:31:56 THE COURT: Yes.

01:32:13 THE CLERK: Step up here please. Remain
01:32:34 standing. Raise your right hand, put your left on the
01:32:36 Bible.

NICOLE POWERS, Called as a witness, having been
01:32:38 duly sworn, was examined and testified as follows:

01:32:38 THE CLERK: Please state your name for the
01:32:46 record.

01:32:46 THE WITNESS: Nicole Powers.

01:32:47 THE CLERK: Spell your first name.

01:32:48 THE WITNESS: N-I-C-O-L-E.

01:32:50 THE CLERK: And your last name.

01:32:51 THE WITNESS: P-O-W-E-R-S.

01:32:53 THE CLERK: Have a seat please.

01:32:54 THE COURT: Ms. Powers, you are a very soft
01:32:57 spoken person so make sure as you're answering
01:32:59 questions you're very close to the microphone, okay?

01:33:01 THE WITNESS: Okay.

01:33:01 THE COURT: And also I'm going to ask you
01:33:03 whether or not you consent to having your testimony
01:33:05 video and audio taped.

01:33:06 THE WITNESS: No, thank you.

01:33:07 THE COURT: Okay. Your witness.

01:33:12 MR. OAKES: Thank you.

01:33:13 DIRECT EXAMINATION

01:33:13 BY MR. OAKES:

01:33:14 **Q.** Good afternoon, Mrs. Powers.

01:33:15 **A.** Good afternoon.

01:33:15 **Q.** And where do you live?

01:33:16 **A.** I live at 2803 U.S. Route 11 in Parish, New York.

01:33:21 **Q.** And is Parish the township where your house is
01:33:24 located or is that the mailing address?

01:33:26 **A.** That's the mailing address.

01:33:27 **Q.** And what township are you actually located in?

01:33:30 **A.** Mexico.

01:33:30 **Q.** Are you married?

01:33:31 **A.** Yes.

01:33:31 **Q.** Who are you married to?

01:33:32 **A.** Jeremy Powers.

01:33:34 **Q.** How long have you been married to him?

01:33:35 **A.** About ten years roughly.

01:33:38 **Q.** And Nicole, I'm going to direct your attention to
01:33:42 Thursday, July twenty-fourth, 2014. Do you recall that
01:33:46 day?

01:33:47 **A.** Yes.

01:33:47 **Q.** And on that day were you looking online at any
01:33:51 newspaper articles?

01:33:51 **A.** Yes.

01:33:52 **Q.** What were you reading?

01:33:54 **A.** I was on Facebook and I had noticed something that
01:33:56 somebody had posted about cabins in the -- in the area that
01:34:01 they were investigating and it's just sites that I was
01:34:10 seeing.

01:34:10 **Q.** And after reading that article or some articles
01:34:13 online, did you contact your husband?

01:34:15 **A.** Yes.

01:34:16 **Q.** For what purpose?

01:34:17 **A.** 'Cause I know that he hunts in the area that's
01:34:19 located next to, you know, it was in that vicinity, and I
01:34:25 didn't know if maybe he had seen any structures or cabins
01:34:28 or anything in that area.

01:34:30 **Q.** So you called him by telephone?

01:34:32 **A.** I called him on the phone.

01:34:33 **Q.** What time was that, ballpark?

01:34:36 **A.** Maybe late morning, early afternoon. I'm not
01:34:38 exactly sure.

01:34:39 **Q.** Did Jeremy come home from work that day?

01:34:43 **A.** Yes.

01:34:43 **Q.** Ballpark, what time did he come home?

01:34:47 **A.** He's usually home about 7:15, 7:30 at night.

01:34:50 **Q.** And when he came home that night, what did you guys
01:34:53 do initially?

01:34:53 **A.** He came home, took his, you know, coat and stuff,
01:34:58 well, not coat, but his lunch pail, whatnot, put it in the
01:35:02 house, and we discussed whether or not we were going to go
01:35:04 and walk around and see if we could see anything over
01:35:07 there.

01:35:07 **Q.** Okay, and did you guys make a decision?

01:35:09 **A.** We did, and we decided to go take a look and see if
01:35:12 there was anything.

01:35:13 **Q.** In the area that you were looking at, was that on
01:35:15 U.S. Route 11 or another location?

01:35:17 **A.** No, it's on Rice Road.

01:35:18 **Q.** And that's in the Town of Mexico?

01:35:20 **A.** I'm not really sure. They're -- the town line is
01:35:26 like right there so I'm not actually sure if it's in Mexico

01:35:29 or it's Parish at that point.

01:35:31 **Q.** That's fine, Nicole. And who went to that location?

01:35:33 **A.** Jeremy and myself.

01:35:36 **Q.** Okay, and what were you going there for?

01:35:39 **A.** Just to see if there were any cabin structures or 01:35:42 anything of that nature in that area.

01:35:45 **Q.** And who was leading the way or was somebody leading 01:35:48 the way between the two of you?

01:35:50 **A.** Just Jeremy just because he hunts over there and 01:35:52 he -- the gentleman that he knows owns property over there, 01:35:56 he logs over there, so he's relatively familiar with the 01:35:59 area.

01:36:00 **Q.** And did you and Jeremy eventually get to a spot in 01:36:04 the woods where you stopped that you thought was of 01:36:07 interest?

01:36:08 **A.** Yeah.

01:36:08 **Q.** And was that on the north side or the south side of 01:36:12 Rice Road?

01:36:13 **A.** South side of Rice Road.

01:36:16 **Q.** And if you remember, was there any -- was there like 01:36:21 a little creek nearby?

01:36:22 **A.** Yeah, right alongside it.

01:36:24 **Q.** And can you describe the area in the woods where you 01:36:27 guys stopped at, what it looked like when you first saw it?

01:36:30 **A.** Just a rundown structure. It was collapsed with

01:36:33 leaves and natural debris all over it.

01:36:37 **Q.** Okay, and what did you guys do when you got there?

01:36:41 **A.** Looked around, moved leaves to see what was
01:36:47 underneath it.

01:36:49 **Q.** What were you looking for?

01:36:50 **A.** Anything, to see if it was -- if it resembled a
01:36:55 cabin or if it was just, you know, just something that -- I
01:36:59 don't know.

01:36:59 **Q.** Were you trying to see if it matched up with the
01:37:02 newspaper description?

01:37:03 **A.** Basically, yeah.

01:37:04 **Q.** Did you or -- you or Jeremy move anything at that
01:37:09 time?

01:37:09 **A.** We moved leaves, part of the roof, that resembled a
01:37:14 roof, it had shingles on it, that's pretty much all we did
01:37:19 Thursday.

01:37:20 **Q.** And then on Thursday did you or Jeremy take anything
01:37:23 with you, a spade, a pickax, anything like that?

01:37:26 **A.** I don't think we brought -- yes, we brought a
01:37:29 shovel, we did bring the shovel with us on Thursday.

01:37:32 **Q.** And did you guys do anything with the shovel on
01:37:34 Thursday?

01:37:35 **A.** We used it to lift up what we assume is the roof.

01:37:39 **Q.** Okay, and when you talk about it being a collapsed
01:37:43 structure, it wasn't a standing four walls structure?

01:37:46 **A.** No, no, it was flat.

01:37:48 **Q.** How long were you guys out there Thursday?

01:37:52 **A.** Approximately half-hour, forty-five minutes. It wasn't long. 01:37:54

01:37:55 **Q.** And when you guys left did you go back home?

01:38:00 **A.** Yes.

01:38:00 **Q.** Now I'm going to direct your attention to Sunday a few days later. 01:38:03

01:38:04 **A.** Okay.

01:38:04 **Q.** Did you guys go back to that location on Sunday?

01:38:08 **A.** Yes, we did.

01:38:08 **Q.** What time approximately?

01:38:12 **A.** Maybe eleven-ish.

01:38:14 **Q.** A.m. or p.m.?

01:38:16 **A.** A.m., I'm sorry.

01:38:17 **Q.** And was it just you and Jeremy again?

01:38:20 **A.** Um hum.

01:38:20 **Q.** Did you guys take anything with you?

01:38:23 **A.** We did. We brought the shovel again.

01:38:24 **Q.** And when you got back to that location, how did that location compare to how it looked when you left Thursday night? 01:38:29 01:38:32

01:38:32 **A.** It appeared to be the same condition as it was when we left Thursday. 01:38:35

01:38:37 **Q.** And what if anything did you and Jeremy do on Sunday

01:38:40 morning?

01:38:40 **A.** Sunday morning we moved more of the roof debris. We
01:38:45 located a spot that had cement, a carpeting, and then
01:38:50 cement under the carpeting and he picked -- lifted part of
01:38:55 the cement but that was pretty much the extent of it.

01:39:03 **Q.** Nicole, if I use the term footprint of the
01:39:07 structure --

01:39:07 **A.** Okay.

01:39:07 **Q.** -- do you know what that term means?

01:39:09 **A.** Yes.

01:39:09 **Q.** The outside perimeter of the structure?

01:39:12 **A.** Um hum.

01:39:13 **Q.** What if anything did you and Jeremy do inside of
01:39:15 that footprint on Sunday?

01:39:22 **A.** Just moved stuff around. We dug a little bit, we
01:39:28 moved, like I said, we moved the concrete.

01:39:31 **Q.** Now when you dug, are you referring to the dirt
01:39:33 then?

01:39:34 **A.** Um hum.

01:39:34 **Q.** And what were you guys doing with the dirt?

01:39:36 **A.** Just we dug into the dirt to get more -- to be able
01:39:43 to lift up more of the roofing I mean because it was --

01:39:52 **Q.** Now as you guys were digging in the dirt, did you
01:39:55 look to see if there was anything that caught your
01:39:57 attention?

01:39:57 **A.** I mean we had our eyes, you know, we were looking
01:40:00 around and stuff but --

01:40:01 **Q.** And as you were turning over some of the dirt inside
01:40:05 of that footprint, what were you doing with the dirt?

01:40:07 **A.** Moving it off to the side.

01:40:08 **Q.** Were you guys --

01:40:11 **A.** Not flinging it, but, you know, moving it over to
01:40:15 more like the edge of what it looked like. It wasn't as
01:40:19 you put it the footprint of the structure.

01:40:22 **Q.** And on Thursday, what if anything did you and Jeremy
01:40:32 take or remove from the structure?

01:40:33 **A.** Nothing.

01:40:34 **Q.** And on Sunday when you left, again, how long were
01:40:37 you there on Sunday?

01:40:38 **A.** Again probably approximately forty-five minutes.

01:40:41 **Q.** And what if anything did you take with you that had
01:40:44 been at the structure?

01:40:45 **A.** Nothing.

01:40:46 **Q.** Now at some point after you left on Sunday did you
01:40:52 see something on the news that caught your attention?

01:40:54 **A.** Yes.

01:40:55 **Q.** Can you tell us what that was?

01:40:56 **A.** Shortly after I had gotten home, I had seen -- I
01:41:00 can't remember if it was on the TV or again online,
01:41:04 something about them locating a cabin on Rice Road that had

01:41:08 recently been disturbed.

01:41:10 **Q.** And was it later that evening and the next day when
01:41:13 the police officials started arriving at that site?

01:41:16 **A.** Well, arriving at the site?

01:41:18 **Q.** Yes.

01:41:19 **A.** That day, it was Sunday that they arrived at the
01:41:22 site to my information, to my knowledge.

01:41:27 **Q.** And Nicole, we talked a little bit about the area
01:41:34 again and the footprint of where the structure had been.
01:41:37 At any point did you look at the ground next to the
01:41:40 structure or in that surrounding area while you were there?

01:41:44 **A.** Sure.

01:41:44 **Q.** And what was the condition of the ground as you saw
01:41:47 it?

01:41:47 **A.** Leaves, grass, I mean it didn't -- just looked like
01:41:53 a wooded area.

01:41:54 **Q.** What if any evidence did you see that the ground
01:41:59 outside of the structure had been turned up or dug up?

01:42:01 **A.** I didn't see any evidence.

01:42:07 MR. OAKES: Okay, no further questions, Your
01:42:08 Honor.

01:42:08 THE COURT: Ms. Bianco, Ms. Peebles, give me a
01:42:10 second please.

01:42:12 (Whereupon, there was a pause in the
proceeding.)

01:42:31 THE COURT: Thank you.

CROSS-EXAMINATION

01:42:33 BY MS. PEEBLES:

01:42:33 **Q.** I just have a couple questions for you, Ms. Powers.

01:42:38 **A.** Sure.

01:42:38 **Q.** Now you indicated that when you were shoveling the 01:42:40 dirt, kind of flinging it over to the side, you were moving 01:42:43 it, right?

01:42:44 **A.** Moving it, yes, not flinging.

01:42:45 **Q.** Just you were moving it off to the edge, is that 01:42:48 fair?

01:42:48 **A.** Yes.

01:42:49 **Q.** And you weren't taking it, putting it back, you 01:42:51 just -- when you dug it out, you just left it there, right?

01:42:54 **A.** Right.

01:42:54 **Q.** And so is it -- well, strike that. Did you dig out 01:43:00 a ten by fifteen foot area?

01:43:02 **A.** I honestly I don't know.

01:43:04 **Q.** About how big of an area did you -- did you dig out 01:43:08 where you were moving the dirt?

01:43:11 **A.** I honestly I couldn't say. I don't know.

01:43:14 **Q.** And as the dirt was being tossed off to the side, 01:43:19 were you examining it closely as it was being tossed off to 01:43:22 the side?

01:43:23 **A.** We weren't tossing it but we weren't examining it, 01:43:26 no.

01:43:26 **Q.** And you weren't -- it certainly wasn't put back
01:43:29 where you got it from.

01:43:30 **A.** No, it was not.

01:43:31 MS. PEEBLES: No further questions.

01:43:32 THE COURT: Just a second, Mr. Oakes, if you
01:43:34 have any questions.

01:43:35 (Whereupon, there was a pause in the
01:43:42 proceeding.)

01:43:42 THE COURT: Mr. Oakes, any questions?

01:43:44 MR. OAKES: No, thank you, Your Honor.

01:43:44 THE COURT: You can step down. Thank you very
01:43:46 much.

01:43:46 MR. OAKES: Your Honor, the People call Darron
01:43:48 Vecchio.

01:43:49 THE COURT: Darron Vecchio?

01:43:51 MR. OAKES: Yes, sir.

01:44:18 THE CLERK: Stand up here please. Raise your
01:44:33 right hand, put your left on the Bible.

01:44:36 DARRON VECCHIO, Called as a witness, having
01:44:42 been duly sworn, was examined and testified as follows:

01:44:42 THE CLERK: Please state your name for the
01:44:44 record.

01:44:44 THE WITNESS: Darron Vecchio.

01:44:45 THE CLERK: Spell your first name.

01:44:47 THE WITNESS: D-A-R-R-O-N.

01:44:49 THE CLERK: And your last name.

01:44:50 THE WITNESS: V-E-C-C-H-I-O.

01:44:52 THE CLERK: Have a seat please.

01:44:53 THE COURT: Mr. Vecchio, make sure you speak
01:44:55 loudly so when you're answering questions, make sure
01:44:59 you're up to the microphone, and then do you consent to
01:45:01 having your testimony video and audio taped?

01:45:04 THE WITNESS: No.

01:45:04 THE COURT: Thank you. Your witness, Mr.
01:45:07 Oakes.

01:45:08 MR. OAKES: Thank you.

01:45:09 DIRECT EXAMINATION

01:45:09 BY MR. OAKES:

01:45:11 **Q.** Good afternoon, Darron.

01:45:13 **A.** How are you doing?

01:45:15 **Q.** Can you please state your -- well, you stated your
01:45:16 name. Do you work, Darron?

01:45:18 **A.** Syracuse Housing Authority.

01:45:19 **Q.** And what's your position with Syracuse Housing
01:45:22 Authority?

01:45:22 **A.** Maintenance crew leader.

01:45:24 **Q.** And how long have you worked for the Syracuse
01:45:26 Housing Authority?

01:45:27 **A.** Sixteen years.

01:45:29 **Q.** And where do you live now, Darron?

01:45:30 **A.** 3028 U.S. Route 11, Parish.

01:45:33 **Q.** And is that actually in the township of Parish or is that just the mailing address if you know?

01:45:39 **A.** It's Mexico.

01:45:41 **Q.** Who are your parents?

01:45:43 **A.** Debbie and Dave Vecchio.

01:45:46 **Q.** Where do they live?

01:45:47 **A.** 44 Rice Road, Parish.

01:45:49 **Q.** How long have your parents lived there if you know?

01:45:53 **A.** Thirty years.

01:45:55 **Q.** Most --

01:45:56 **A.** Actually no. It would be close to forty years.

01:45:59 **Q.** Have you lived in your parents or did you live in that same structure when you grew up on Rice Road?

01:46:06 **A.** Yep.

01:46:06 **Q.** And aside from your parents -- well, do they live on the north side or the south side of Rice Road?

01:46:12 **A.** North side.

01:46:13 **Q.** Do you have any other family that live in the area, Darron?

01:46:16 **A.** Aunts, uncles.

01:46:20 **Q.** Any other family members that live on Rice Road?

01:46:22 **A.** Grandfather.

01:46:24 **Q.** What's your grandfather's name?

01:46:26 **A.** Walter Rice.

01:46:27 **Q.** And how close does he live or where does he live on Rice Road compared to your parents' place?

01:46:33 **A.** Five-hundred feet up the road.

01:46:36 **Q.** And Walter Rice, that's your mom's dad?

01:46:41 **A.** Yes.

01:46:41 **Q.** Now, as a kid growing up in that area, did you ever build a structure on that road?

01:46:49 **A.** Yes.

01:46:50 **Q.** Which side of the road, Darron?

01:46:52 **A.** It would be on the south side of the road.

01:46:54 **Q.** Did you know who owns that property?

01:46:56 **A.** At the time Scorzelli owned it.

01:46:59 **Q.** Okay, and do you remember Mr. Scorzelli's first name if you know?

01:47:03 **A.** No, I don't. It was a few brothers but I'm not sure.

01:47:11 **Q.** Okay, and is it near any other landmarks in the woods?

01:47:20 **A.** Just a creek.

01:47:24 **Q.** And the structure that you built, Darron, could you describe what that structure looked like when you built it and how it may have changed over the years for the Court?

01:47:37 **A.** When I built it, it was square, flat roof, built out of two by fours and plywood.

01:47:47 **Q.** Roughly how big was it initially when you built it?
01:47:51 **A.** Probably fifteen by fifteen.
01:47:55 **Q.** Darron, how old are you now?
01:47:58 **A.** Thirty-seven.
01:47:58 **Q.** What year were you born?
01:48:00 **A.** Seventy-seven.
01:48:02 **Q.** Do you know how old you were when you first built
01:48:05 that camp or that fort?
01:48:07 **A.** I think we were roughly eleven, twelve, thirteen.
01:48:10 **Q.** Okay, and at the time you built it did you call it a
01:48:14 fort, a camp?
01:48:14 **A.** It was a fort.
01:48:16 **Q.** And you said it had walls, it had a roof. What type
01:48:21 of flooring did you have in there?
01:48:22 **A.** One side was partial concrete, wood I believe, and
01:48:29 the other side wood floor.
01:48:36 **Q.** And when you talk about sides, are you talking about
01:48:41 sides within the same structure, Darron?
01:48:43 **A.** Yes.
01:48:43 **Q.** And you said the one side had concrete, some wood.
01:48:49 What was on the other side, I'm sorry?
01:48:51 **A.** I believe it was plywood, waferboard.
01:48:58 **Q.** And did the flooring have joists as you normally
01:49:03 think of like a cabin or a house having?
01:49:05 **A.** I'm not sure, but I think we put pallets down and

01:49:10 then put plywood on top of the pallet.

01:49:12 **Q.** But as far as again, having regular joists that run
01:49:16 along a stringer?

01:49:18 **A.** No.

01:49:18 **Q.** There wasn't anything like that?

01:49:20 **A.** No.

01:49:20 **Q.** Did you have floorboards like hardwood floors down
01:49:23 in the structure?

01:49:24 **A.** No.

01:49:24 **Q.** Did you have a fireplace?

01:49:32 **A.** No. There was an outside fire pit where we had
01:49:36 little outside fires but nothing inside.

01:49:39 **Q.** And Darron, how -- how far off Rice Road was that
01:49:47 fort? If you were to draw a direct line going south off of
01:49:52 Rice Road, how far back would it be?

01:49:55 **A.** I'd say three, four-hundred feet.

01:49:57 **Q.** Would you have to cross the creek to get to the
01:50:02 fort?

01:50:02 **A.** We did, but if you go in in a certain spot you
01:50:09 wouldn't have to.

01:50:10 **Q.** But generally, again, if you're at that camp or that
01:50:15 fort location, the creek is located between that and Rice
01:50:20 Road?

01:50:20 **A.** Yes.

01:50:21 **Q.** And if you were to walk in from the roadway, how

01:50:26 long would it take you to walk back there?

01:50:28 **A.** Probably not even five minutes. Three, four minutes
01:50:33 probably.

01:50:33 **Q.** And what were the woods like in that area back in
01:50:38 the time you were using it?

01:50:40 **A.** Normal woods. It depends on where you went in it.

01:50:45 **Q.** Well, let me ask you. To get back to the camp,
01:50:47 would you have to cross railroad tracks?

01:50:50 **A.** No.

01:50:51 **Q.** Are there railroad tracks generally in that area?

01:50:54 **A.** Yeah.

01:50:56 **Q.** How far is your fort from the railroad tracks?

01:51:00 **A.** I would say a good quarter mile at least, half mile.

01:51:05 **Q.** Darron, I direct your attention to Sunday, July
01:51:17 twenty-seventh of 2014. Do you recall that day?

01:51:23 **A.** No, I don't.

01:51:27 **Q.** I'm going to -- do you remember a Sunday at the end
01:51:31 of July where you had a call from your mom?

01:51:35 **A.** I don't remember but --

01:51:38 **Q.** Darron, if you were to look at a statement that you
01:51:43 gave to the Sheriff's Department, would that refresh your
01:51:45 recollection?

01:51:46 **A.** Yeah, sure.

01:52:26 (People's Exhibit KKKK was marked for
01:52:28 identification).

01:52:29 **Q.** And actually, Darron, before I talk about on that Sunday, you said you built the camp when you were how old again?

01:52:36 **A.** Somewhere around eleven, twelve, thirteen.

01:52:40 **Q.** Okay, so that would be eighty-eight to ninety, somewhere in that area?

01:52:45 **A.** Yeah.

01:52:45 **Q.** 1998 to 1990? When you were fifteen did you know a girl Sarah?

01:52:51 **A.** Yeah.

01:52:52 **Q.** Okay, and what was your relationship with Sarah at that time?

01:52:56 **A.** We were boyfriend/girlfriend.

01:52:58 **Q.** And at some point many years later you and Sarah got married?

01:53:02 **A.** Right.

01:53:03 **Q.** Now, did you continue to go to that camp after you started dating Sarah?

01:53:09 **A.** No, no.

01:53:11 **Q.** Do you recall approximately when you stopped using that camp?

01:53:15 **A.** I know I was fifteen. That's about the time I quit going back there.

01:53:25 **Q.** So that would have been around 1992 then?

01:53:29 **A.** Yep.

01:53:31 **Q.** And did you ever go back and take a look at the camp
01:53:35 after 1992?

01:53:36 **A.** Yeah.

01:53:36 **Q.** See what condition it was?

01:53:37 **A.** Yeah.

01:53:39 **Q.** And 1994, do you recall what was the condition of
01:53:43 the camp at that time?

01:53:44 **A.** I believe it was half caved in, maybe fully caved
01:53:49 in, I can't really remember. I know it was caved in a
01:53:53 little bit.

01:53:54 **Q.** Now Darron --

01:53:59 MR. OAKES: If I can approach, Your Honor.

01:54:01 THE COURT: Yes.

01:54:01 **Q.** Darron, I'm going to hand you what's been marked for
01:54:06 identification as KKKK. Do you recognize what that is,
01:54:11 Darron?

01:54:11 **A.** Yeah.

01:54:13 **Q.** And what is it?

01:54:15 **A.** It's a statement.

01:54:19 **Q.** Is that a statement that you gave to the Oswego
01:54:21 County Sheriff's Department?

01:54:22 **A.** Yep.

01:54:24 **Q.** And what's the date you gave that statement, Darron?

01:54:26 **A.** July twenty-eighth, 2014.

01:54:28 **Q.** Okay, Darron, would reviewing that statement refresh

01:54:31 your memory as to the date that you went to the camp?

01:54:33 **A.** Yep.

01:54:34 **Q.** Take whatever time you need to review it yourself.

(Whereupon, there was a pause in the
01:54:59 proceeding).

01:54:59 **Q.** All set? Thanks, Darron. Darron, now that you've
01:55:06 reviewed your statement, does it refresh your recollection
01:55:07 regarding the events of Sunday, July twenty-seventh?

01:55:10 **A.** Yeah.

01:55:11 **Q.** And on that day of July twenty-seventh, 2014, were
01:55:16 you contacted by your mom?

01:55:18 **A.** Yeah, yeah.

01:55:23 **Q.** And I don't want to ask you what you and your mom
01:55:26 talked about, but in response to that conversation, did you
01:55:29 go to a location?

01:55:30 **A.** Um hum.

01:55:30 **Q.** And where was that?

01:55:31 **A.** Where the camp was.

01:55:33 **Q.** And when you went back there, did you meet up with
01:55:39 anybody?

01:55:40 **A.** Yeah. There was a few guys back there.

01:55:43 **Q.** Okay, and who were the guys if you know?

01:55:45 **A.** The only guy I knew was Mr. Scorzelli.

01:55:51 **Q.** And aside from Mr. Scorzelli, were there any other
01:55:55 people there?

01:55:55 **A.** Yeah. There was two guys from the Post-Standard and a couple other guys.

01:56:02 **Q.** Okay, if I point to this gentleman sitting over here with the glasses, was that one of the guys that was there if you recall?

01:56:11 **A.** Can't say.

01:56:15 **Q.** Not sure?

01:56:16 **A.** Nope, can't say.

01:56:18 **Q.** But you remember the reporter or reporters from the Post-Standard were there?

01:56:22 **A.** Yeah, I remember them being there.

01:56:24 **Q.** Okay, and did you meet them right at the campsite or did you meet them out at Rice Road and walk back with them?

01:56:32 **A.** I think once I started back, I think they met me halfway.

01:56:36 **Q.** Okay, and when you saw those gentlemen, approximately how many men were back there?

01:56:45 **A.** I'd say four or five, maybe five guys.

01:56:51 **Q.** And what if anything did they -- those gentlemen have with them?

01:56:56 **A.** They had pickaxes, you know, shovels, stuff like that.

01:57:02 **Q.** And how was it that you remember that, Darron?

01:57:05 **A.** Because they were carrying them. They had them in their hands.

01:57:09 **Q.** Okay, and how long were you back in the woods with those gentlemen at the campsite?

01:57:19 **A.** Fifteen minutes maybe.

01:57:20 **Q.** And what were they doing during that fifteen minutes you were there?

01:57:24 **A.** Well, they were just looking at the site.

01:57:29 **Q.** While you were there, you didn't see anybody touch anything, move anything?

01:57:33 **A.** No, they kept everybody away from the area.

01:58:00 MR. OAKES: No further questions, Your Honor.

01:58:01 THE COURT: No further questions?

01:58:02 MR. OAKES: No further questions, Your Honor. Thank you.

01:58:04 THE COURT: Ms. Peebles?

01:58:05 MS. PEEBLES: Yes.

01:58:07 CROSS-EXAMINATION

01:58:08 BY MS. PEEBLES:

01:58:09 **Q.** Good afternoon, Darron.

01:58:18 **A.** Hi.

01:58:18 **Q.** Just a couple questions for you. Structure that we're talking about off of Rice Road, you had a roof on it, right?

01:58:26 **A.** Um hum.

01:58:27 **Q.** It was an aluminum roof or what was it made of?

01:58:30 **A.** It was wood, I think it had wood roofing on there.

01:58:33 Q. And it had four walls?

01:58:35 A. Yes.

01:58:36 Q. And it had a door with a hinge on it?

01:58:38 A. Yep.

01:58:38 Q. And you had a window?

01:58:39 A. Yes, one window I believe.

01:58:41 Q. And you had some built-in bunk beds?

01:58:44 A. Yep.

01:58:45 Q. And you had a refrigerator there but there was no electricity, is that right? 01:58:50

01:58:51 A. Right, right.

01:58:52 Q. Now, with regard to your grandfather, Walter Rice, he owned the property right down the street from where you grew up, right? 01:58:59 01:59:01

01:59:02 A. Yep.

01:59:02 Q. And there was a trailer on the property?

01:59:05 A. Yep.

01:59:06 Q. And you know Darcy Purdy and Tom Rathbun?

01:59:10 A. Yes, um hum.

01:59:11 Q. And at one point they were staying in the trailer. Do you remember that? 01:59:13

01:59:14 A. Yeah.

01:59:14 Q. And your grandfather never moved into that trailer with those two, is that right? 01:59:17

01:59:19 A. No, no.

01:59:21 **Q.** In fact, your grandfather would never have done that, is that true?

01:59:25 MR. OAKES: Objection.

01:59:26 THE COURT: I don't think I heard the answer to the first question. Ask the first question again.

01:59:30 MS. PEEBLES: Do you want her to read it back for you?

01:59:32 THE COURT: Yeah. The first question was whether or not your grandfather moved in. I didn't hear the answer when you asked the followup question.

01:59:39 MS. PEEBLES: Oh, I said the first time did he and he said no, and then I said in fact he would never have done that and he said no. That was the series of questions, but she could read it back.

01:59:47 THE COURT: Yeah, would you mind reading it back?

01:59:49 (Whereupon, the court reporter read back).

01:59:49 MR. OAKES: And Your Honor, I'm objecting. It's beyond the scope of direct. She's getting into areas that were not discussed on direct.

02:00:24 THE COURT: Ms. Peebles, do you wish to be heard?

02:00:26 MS. PEEBLES: Well, he brought up the fact that his grandfather lived right down the street and owned the property so I think he opened the door and he

02:00:33 answered the question.

02:00:34 THE COURT: I'm going to allow it.

02:00:36 **Q.** You can answer that question.

02:00:37 **A.** No, I could never see him living with a tenant.

02:00:40 **Q.** Thank you.

02:00:41 MS. PEEBLES: No further questions.

02:00:49 THE COURT: Just a second, Mr. Oakes.

(Whereupon, there was a pause in the proceeding).

02:01:01 THE COURT: Go ahead, Mr. Oakes. Recross?
02:01:03 Redirect, excuse me.

REDIRECT EXAMINATION

02:01:05 BY MR. OAKES:

02:01:05 **Q.** Darron, if you know, were Darcy and Tom living in
02:01:09 that trailer when they got married?

02:01:11 **A.** I couldn't tell you. I do know they went away for,
02:01:17 you know, amount of time where I took care of their dog and
02:01:22 possibly mowed their grass for them.

02:01:24 **Q.** And so when you talk about mowing their grass, this
02:01:28 would have been summertime then?

02:01:29 **A.** Yes, summertime.

02:01:30 **Q.** Okay, thank you, Darron.

02:01:33 MS. PEEBLES: I have no questions, Judge.
02:01:35 Thank you.

02:01:35 THE COURT: Sir, you're set. Thank you.

02:01:37 Anybody else?

02:01:41 MR. OAKES: Your Honor, the People have no 02:01:43 additional witnesses at this time.

02:01:44 THE COURT: No additional witnesses at this 02:01:47 time?

02:01:47 MR. OAKES: No additional witnesses at this 02:01:50 time.

02:01:50 MS. PEEBLES: Judge, I filed a motion this 02:01:52 morning with the Court.

02:01:53 THE COURT: Yeah.

02:01:53 MS. PEEBLES: Asking for permission to call 02:01:56 certain witnesses as our rebuttal case, and I won't 02:01:59 know until the Court provides me with a decision. Our 02:02:05 position is that we recently obtained information --

02:02:08 THE COURT: Hold on, hold on. Before I do the 02:02:10 oral argument I want to take about a ten-minute recess.

MS. PEEBLES: Oh, sure.

02:02:13 THE COURT: Okay, because that's what you're 02:02:14 doing is your oral argument on your motion.

02:02:17 MS. PEEBLES: That and there are things that I 02:02:19 also have to add, but yes, Judge.

02:02:20 THE COURT: Let's take a ten-minute recess. 02:02:23 The People are done with their witnesses, right?

02:02:25 MR. OAKES: Yes, Your Honor, thank you.

02:02:26 (Whereupon, there was a recess).

02:14:58 THE COURT: Yes.

02:14:58 MR. OAKES: Your Honor, during the break, Mr. 02:15:02 Lyndaker provided to us responses that the Court 02:15:06 received from the New York State Department of Motor 02:15:08 Vehicles in response to subpoenas we had asked the 02:15:10 Court to issue. I'm sorry, we had issued. They were 02:15:17 received by looks like the Court for an image captures 02:15:21 for DMV photos for Michael Bohrer and also for James 02:15:26 Steen. They were again received by the Court directly 02:15:30 from the Department of Motor Vehicles with a 02:15:33 certification and would be compliant with CPL 4518 02:15:38 attached. What we'd like to do is introduce, have 02:15:42 those marked and introduced, both of them as evidence.

02:15:45 THE COURT: They're DMV photographs of Steen 02:15:49 and Bohrer?

02:15:50 MR. OAKES: Yes, Your Honor. One of the 02:15:51 issues that have been put in place is regarding the 02:15:53 personal appearance of James Steen and Michael Bohrer 02:15:57 close in time to the 1994 --

02:15:59 THE COURT: Okay.

02:16:00 MR. OAKES: There was a discussion 02:16:02 particularly regarding the testimony of William Pierce 02:16:05 regarding James Steen. The photograph that was shown 02:16:09 to Mr. Pierce by the Oswego County Sheriff's Department 02:16:11 was from 1988 I believe if I'm recalling it correctly.

02:16:17 Again, since their appearance around the time of 1994,
02:16:21 the date of the abduction, is an issue giving the
02:16:24 descriptions, what we'd like to do is put in the DMV
02:16:27 photographs, and again, specifically as to Mr. Steen,
02:16:31 there is an image from August tenth of 1993. There's
02:16:37 also an image of May sixteenth of 1997.

02:16:41 THE COURT: Of Steen, Steen still?

02:16:44 MR. OAKES: And regarding Mr. Steen, also May
02:16:46 third, 2002.

02:16:46 THE COURT: Well, you would agree if any of
02:16:48 them are relevant it's the one from 1990 --

02:16:51 MS. PEEBLES: Four.

02:16:51 MR. OAKES: Oh, well, there is one from August
02:16:53 of 1993.

02:16:54 THE COURT: Correct.

02:16:54 MR. OAKES: And again, we'd be willing to just
02:16:57 offer that again. My thought would be since it came as
02:16:59 an entire packet, we would just give it to the Court as
02:17:02 an entire packet. If the Court deems the later ones
02:17:05 aren't relevant, you can give it whatever weight you
02:17:07 want to.

02:17:07 THE COURT: I guess the Court's concern would
02:17:12 be how a person appears in August of 1993 may not be
02:17:16 indicative of how that same person appeared in April of
02:17:18 1994, right?

02:17:21 MR. OAKES: Correct, potentially.

02:17:24 THE COURT: He can grow facial hair, right?

02:17:28 MR. OAKES: Yes.

02:17:29 THE COURT: Ms. Peebles, I'm assuming you want
02:17:31 to object?

02:17:32 MS. PEEBLES: Yeah, I object, and that's why
02:17:34 he's offering them.

02:17:37 THE COURT: I'm confused by the Bohrer offer.
02:17:39 Was there any testimony from anybody regarding Bohrer's
02:17:42 identifi -- appearance in --

02:17:46 MR. OAKES: There is nobody --

02:17:47 THE COURT: April, ninety-four.

02:17:49 MR. OAKES: There's nobody who's been able to
02:17:51 identify Mr. Bohrer as being at the D & W on April
02:17:54 third, 1994.

02:17:55 THE COURT: Correct.

02:17:56 MR. OAKES: The defense --

02:17:57 THE COURT: So how can Mr. Bohrer's ID -- what
02:17:59 are his ID dates?

02:18:01 MR. OAKES: Part of the -- regarding Mr.
02:18:04 Bohrer?

02:18:05 THE COURT: Yeah. What are his ID dates,
02:18:06 picture dates?

02:18:07 MR. OAKES: The dates, I'm sorry.

02:18:08 THE COURT: That's all right.

02:18:09 MR. OAKES: First one is February twenty-first
02:18:10 of 1995.
02:18:13 THE COURT: Okay, the same argument, right,
02:18:16 somebody in 1995 may not look the same way as they did
02:18:20 in 1994, fair enough?
02:18:21 MR. OAKES: Fair enough.
02:18:24 THE COURT: Ms. Peebles, do you wish to be
02:18:25 heard with regard to Bohrer or is your objection the
02:18:28 same?
02:18:28 MS. PEEBLES: I have the same objection to
02:18:30 both, Judge.
02:18:30 THE COURT: And what is that objection, Ms.
02:18:32 Peebles?
02:18:32 MS. PEEBLES: They're not relevant because it
02:18:34 doesn't identify what they looked like in April of
02:18:36 1994.
02:18:38 THE COURT: I'm going to keep them out. I
02:18:40 think -- I just don't think that they are dispositive
02:18:42 of appearance on any given -- at the time of the
02:18:44 abduction, April of 1994. People can change their
02:18:52 appearances very quickly. I, you know, if there was a
02:18:56 jury here I think it would be much more prejudicial
02:18:59 than probative, I believe it -- it's of little
02:19:04 probative value to the Court. In reviewing that, it's
02:19:05 not going to be one of confusion to me, I just don't

02:19:07 see the probative value at this time so I'm going to
02:19:09 keep both of them out.

02:19:11 MR. OAKES: That's fine. Thank you, Your
02:19:13 Honor.

02:19:13 THE COURT: Now before we left on break, or
02:19:16 recess, excuse me, Ms. Peebles, you have submitted a
02:19:20 motion as of today's date, I think it came to my
02:19:22 chambers late yesterday afternoon when I had already
02:19:25 left, we first saw it this morning when we arrived.
02:19:28 Mr. Oakes and Mr. Moody, you have submitted some
02:19:34 caselaw but no written text regarding the response to
02:19:38 Ms. Peebles' motion. Do you wish time to have a
02:19:41 written response? If you do it's going to be very
02:19:46 limited time.

02:19:47 MR. OAKES: No, I understand, Your Honor.

02:19:48 THE COURT: I can take oral arguments right
02:19:50 now.

02:19:50 MR. OAKES: If we can rely upon oral
02:19:52 arguments, Your Honor.

02:19:53 THE COURT: Ms. Peebles, do you want to do
02:19:54 oral arguments, submissions or both?

02:19:56 MS. PEEBLES: Well, I have my submission so I
02:19:58 don't mind orally arguing and then the Court can make
02:20:00 its decision, I'm fine with that.

02:20:03 THE COURT: Mr. Oakes, you're kind of on the

02:20:04 short end of the stick because you're not going to have
02:20:05 time to do something in writing. You have some cases,
02:20:08 you're agreeing to do the oral argument, have the Court
02:20:11 makes its decision based upon what the Court has before
02:20:14 it?

02:20:14 MR. OAKES: Yes, Your Honor.

02:20:14 THE COURT: Ms. Peebles, that's the motion
02:20:16 issue. Before I stepped off the bench, you said you
02:20:19 have some additional information you wanted to --

02:20:20 MS. PEEBLES: Yes, Judge.

02:20:21 THE COURT: Let me ask a question first. Is
02:20:24 it in the context of your motion?

02:20:25 MS. PEEBLES: It relates to the motion, Judge.

02:20:27 THE COURT: Okay.

02:20:27 MS. PEEBLES: It's not the same witness. I
02:20:29 didn't realize about the witness, but it definitely
02:20:31 pertains to Mr. Bohrer.

02:20:32 THE COURT: Okay.

02:20:34 MS. PEEBLES: It was --

02:20:34 THE COURT: Having said that, you both
02:20:37 acknowledge the fact that the Court has ruled
02:20:40 previously on the issue raised in your motion, in the
02:20:43 subsequent motion, correct?

02:20:44 MS. PEEBLES: As far as the admissibility or
02:20:46 as far as having --

02:20:47 THE COURT: Ms. Schmitt.
02:20:50 MS. PEEBLES: Yes.
02:20:50 THE COURT: Or John Bohrer testify.
02:20:52 MS. PEEBLES: Based on limited knowledge of
02:20:54 what I had available at that time, yes, Judge, I do.
02:20:55 THE COURT: I'll give you a couple minutes to
02:20:57 argue. I would note in my review of it, a lot of what
02:20:59 you have argued seems to be more ripe for an appeal
02:21:04 issue. Clearly we have a disagreement on the
02:21:06 interpretation of the law, that's a fair assessment,
02:21:08 correct? You and I don't necessarily agree on how I
02:21:13 interpreted the law.
02:21:14 MS. PEEBLES: Well, no, as far as your prior
02:21:16 decision, I agree with that part of it, Judge.
02:21:17 THE COURT: Okay, so go ahead.
02:21:19 MS. PEEBLES: But I think the Court was at
02:21:21 somewhat of a disadvantage not having a lot of the
02:21:24 information that we wanted to bring forward with
02:21:27 connection to that because I was trying to put it
02:21:31 together in such an expeditious manner because we were
02:21:33 kind of under a time constraint, so having said that,
02:21:35 recently, Judge, on Friday, we were provided with some
02:21:42 additional discovery from the prosecution, and some of
02:21:44 it we couldn't read because the copies were illegible,
02:21:49 we couldn't make out the information, they provided it

02:21:51 to us again yesterday, we could make it out. There
02:21:54 were --

02:21:54 THE COURT: Did you say you could make it out
02:21:56 or you could not?

02:21:57 MS. PEEBLES: We could, we could, and having
02:21:59 said that, Judge, they're punch cards which we have
02:22:02 already marked and I -- I do intend to call a witness
02:22:06 that they're going to make available to me from the
02:22:08 Sheriff's Department.

02:22:09 THE COURT: When are you going to call this
02:22:10 witness?

02:22:10 MS. PEEBLES: Well, perhaps today. I don't
02:22:12 know if --

02:22:12 THE COURT: Who is the witness?

02:22:14 MR. OAKES: Lieutenant Rob Moskal, and we had
02:22:17 called him during the lunch break and he is there and
02:22:19 he's able to come over if the Court wants to hear his
02:22:22 testimony.

02:22:22 THE COURT: For rebuttal?

02:22:23 MS. PEEBLES: Well, I suppose you could call
02:22:25 it rebuttal. However, I would have called him on my
02:22:27 direct case if I had known about these.

02:22:29 THE COURT: Are you going to object to her
02:22:30 calling Mr. Moskal, is it Moskal?

02:22:32 MS. PEEBLES: Moskal.

02:22:32 MR. OAKES: Moskal.

02:22:33 THE COURT: As a rebuttal or direct or do you
02:22:36 not care?

02:22:36 MR. OAKES: I don't care which, Your Honor.

02:22:37 THE COURT: Well, get Mr. Moskal over here.
02:22:41 Do you want to get Mr. Moskal over here?

02:22:43 MR. MOODY: I'll call him.

02:22:44 MS. PEEBLES: And so in that regard, we also
02:22:46 had some reports attached to some leads, lead numbers,
02:22:53 recent lead numbers, one of which was a gentleman by
02:22:55 the name of Mr. Teifke who indicated he bought a
02:22:59 property that was previously owned at 242 Mason Road
02:23:03 that was occupied by Michael Bohrer. He went to change
02:23:08 the roof, and when he was pulling up the plywood, he
02:23:11 saw in the soffit that there was a knife. He called
02:23:14 the Sheriff's Department, they did come and they took
02:23:17 the knife.

02:23:18 THE COURT: When -- when was this?

02:23:19 MS. PEEBLES: This was in August of --

02:23:21 THE COURT: Of what year?

02:23:22 MS. PEEBLES: Of 2014. I've not seen the
02:23:25 knife, I don't know how big the knife is. I would
02:23:29 presume that perhaps they might think about a DNA test
02:23:32 with regard to the knife.

02:23:33 THE COURT: Who is they? The People?

02:23:35 MS. PEEBLES: The prosecution. I haven't seen it. I'd like the opportunity to look at it. Like I said, I don't even know what kind of knife it is.

02:23:41 THE COURT: What's your position?

02:23:45 MR. OAKES: I don't know if the sheriffs actually took that into custody, Your Honor, that knife.

02:23:50 THE COURT: Okay. If they did, what's your position regarding the DNA evidence, if it even could be done at this point.

02:23:56 MR. OAKES: And certainly we're willing to have it submitted for potential DNA evidence, but I mean obviously that's going to take a matter of months for that to come back.

02:24:04 THE COURT: I agree. With regard to the knife, if it's in the custody of the Sheriff's Department --

02:24:09 MS. PEEBLES: The report says it is.

02:24:10 THE COURT: Okay, that's fine. Assuming the report's accurate and it's in, until I see the knife in the custody, paper can say one thing, I want to know it's there for sure. Do both parties consent to the admission of the DNA report instead of having to call witnesses?

02:24:24 MS. PEEBLES: Yes, I would agree.

02:24:26 THE COURT: Mr. Oakes?
02:24:27 MR. OAKES: Yes, Your Honor.
02:24:28 THE COURT: So with regard to the knife issue
02:24:29 which is not in your motion papers, so this is
02:24:31 additional --
02:24:31 MS. PEEBLES: It's not. I just found it,
02:24:34 Judge.
02:24:34 THE COURT: I understand, so the knife, can we
02:24:36 have a description of the knife?
02:24:37 MS. PEEBLES: I don't --
02:24:38 THE COURT: Is it in the report?
02:24:39 MS. PEEBLES: It's not described. It just --
02:24:41 they felt that they should call it in so --
02:24:45 THE COURT: Verify that they have this knife
02:24:46 that was taken from Mr. Pelkey? Is that his name?
02:24:50 MS. PEEBLES: Teifke.
02:24:52 THE COURT: Teifke's house or Teifke's
02:24:53 demolition or repair. Where are you going to send the
02:24:57 knife for testing?
02:24:58 MR. OAKES: It would be sent to the New York
02:25:01 State Police Crime Lab in Albany.
02:25:02 THE COURT: Do you consent to them, the New
02:25:04 York State Police Crime Lab, doing the testing?
02:25:06 MS. PEEBLES: Yes, Judge.
02:25:07 THE COURT: Do you consent to the

02:25:08 admissibility of the results of the test?
02:25:10 MR. OAKES: Yes.
02:25:11 MS. PEEBLES: Yes, Judge.
02:25:11 THE COURT: So we don't have to call somebody
02:25:13 in from the State Troopers to testify.
02:25:15 MS. PEEBLES: No, Judge.
02:25:15 THE COURT: That is satisfied.
02:25:17 MR. OAKES: Relative to that issue, my
02:25:19 understanding that the New York State Police Crime Lab
02:25:21 has a recent DNA or Buccal swab from Ken Allen and Sue
02:25:26 Allen, Heidi's parents, so they should be able to make
02:25:27 a comparison if there is any DNA.
02:25:30 THE COURT: The Allens have submitted recently
02:25:31 to a test?
02:25:32 MR. OAKES: Yes.
02:25:33 THE COURT: Okay.
02:25:35 MR. OAKES: So again, that they should be able
02:25:37 to make that comparison at the crime lab.
02:25:39 THE COURT: So the two parties will dismiss
02:25:42 any hearsay argument regarding admissibility, any issue
02:25:46 regarding the Allens' Buccal tests, you consent to
02:25:49 that?
02:25:49 MS. PEEBLES: Yes, Judge.
02:25:50 THE COURT: Okay, so we -- as I understand it
02:25:54 now is going to come in for the Court's consideration

02:25:57 period, right?

02:25:57 MS. PEEBLES: Yes.

02:25:58 THE COURT: No testimony.

02:26:00 MS. PEEBLES: Provided they find anything.

02:26:02 THE COURT: Correct. The results will be
02:26:02 finding something or not.

02:26:03 MS. PEEBLES: Whatever the results are, right.

02:26:05 THE COURT: Sure. Okay, go ahead. What else?

02:26:07 MS. PEEBLES: Those -- that was the one thing,
02:26:09 Judge, that was not contained in my motion. As far as
02:26:12 the request to be able to call John Bohrer, the reason
02:26:17 we believe it's significant, Your Honor, is the first
02:26:20 visit I made to Erie, Pennsylvania when I first met
02:26:25 John Bohrer, I questioned him about his connection to
02:26:27 Oswego County, and he conveyed to me that he knew where
02:26:31 it was and he had visited his brother here and they had
02:26:34 gone to the bars during the college town area but that
02:26:37 he wasn't living here. Then I received reports,
02:26:43 specifically some traffic tickets, indicating that that
02:26:46 was not the case. I made a -- and in that connection
02:26:51 as well, the first meeting I had, I mentioned Dutchess
02:26:55 County to John Bohrer, and he indicated to me that he
02:26:58 had, quote, "nothing to do with anything in Dutchess
02:27:02 County." Never mentioned to me that he lived there. I
02:27:05 was questioning him about his involvement as a

02:27:07 codefendant in a matter involving the criminal
02:27:10 complaint I was attempting to introduce, and he
02:27:14 indicated that he knew nothing about Dutchess County,
02:27:16 and he had only been to Oswego once drinking at the
02:27:19 bars with his brother and hadn't contacted him in many,
02:27:22 many years. Once I received additional information
02:27:26 that in fact some of what he told me wasn't accurate, I
02:27:31 visited him again, and he then told me when I said --
02:27:36 approached him, and I indicated that there was a woman
02:27:38 who came forward from the apartment, I was referring to
02:27:41 Catherine Schmitt, he volunteered to me that "are you
02:27:44 talking about the deformed woman," and I questioned him
02:27:48 about the deformed woman. "I don't know what you're
02:27:50 talking about." He said in New York. When I further
02:27:54 probed him about it, he backed off of it and told me
02:27:57 that she wasn't hurt and that it was probably because
02:28:02 he was there and then again said he couldn't remember,
02:28:06 so after that discussion, I further questioned him
02:28:09 about his travels to New York, and he told me that he
02:28:13 went to Dutchess County with his brother at some point
02:28:18 in the early nineties, 1990, when his brother had
02:28:20 already moved here with his family.

02:28:23 THE COURT: Um hum.

02:28:25 MS. PEEBLES: When he moved here with his
02:28:27 brother Michael, the wife and children had already gone

02:28:29 back to Milwaukee, and he indicated that they were
02:28:31 dealing drugs in the area. He then told me the second
02:28:36 time I talked to him that he went to Mexico, New York
02:28:39 first and that Michael followed him here. I went and
02:28:43 talked to him a third time, and I questioned him again
02:28:46 about the chronology of events because we saw a report
02:28:50 that indicated that there was a John Bower (ph) who was
02:28:56 spelled -- we ran a check on that particular name, we
02:28:58 didn't find one person in the United States with that
02:29:01 last name so we --

02:29:02 THE COURT: Bower?

02:29:03 MS. PEEBLES: It was -- the way it was spelled
02:29:05 in the report, not Bower, it was B-A-U-R-E-A-S, however
02:29:10 it was spelled, it appeared to me that there was some
02:29:13 type of misspelling or mispronunciation when the report
02:29:16 was created. Now what it indicated was that Deputy
02:29:21 Curtis had gone to Spinners hotel and interviewed a
02:29:24 bartender who suggested that this particular gentleman
02:29:26 lived in room two-oh-four and had talked about a Ford
02:29:32 Tempo scoping out the D & W the day before and there
02:29:35 was supposed to be a followup with this gentleman. I
02:29:38 did not see any statement or followup taken by anybody
02:29:43 from the Sheriff's Department in connection with the
02:29:46 statement from the bartender.

02:29:47 THE COURT: And the indication was because the

02:29:50 person who you are identifying as Bower was not in the
02:29:52 room, correct?

02:29:53 MS. PEEBLES: Correct, and they were supposed
02:29:54 to direct the individual to go down to the fire barn to
02:29:58 give a statement. I then --

02:30:00 THE COURT: If a person isn't there to direct
02:30:02 to go to the fire department, how could he be directed
02:30:05 to go to the fire department?

02:30:06 MS. PEEBLES: The fire barn.

02:30:08 THE COURT: They knock on the door, room two-
02:30:10 oh-four, nobody answers, how are they going to direct
02:30:13 him to go down to the fire hall, fire barn, excuse me.

02:30:16 MS. PEEBLES: Well, I would say this, on the
02:30:17 lead sheet that I saw, lead forty-four, it indicated it
02:30:19 was assigned to Deputy Dylan.

02:30:21 THE COURT: I think I saw the --

02:30:22 MS. PEEBLES: And I didn't see where there was
02:30:24 any followup or any statement taken from this
02:30:26 particular individual, whoever.

02:30:27 THE COURT: They gave a reason for that, that
02:30:28 person was not there, correct?

02:30:30 MS. PEEBLES: No, Judge. There's no reason
02:30:32 for it. It was subsequent to the conversation with the
02:30:34 bartender, so Deputy Curtis goes there the morning
02:30:38 Heidi Allen is abducted, individual's not in the room,

02:30:41 they can't talk to this particular person, and then it
02:30:44 was assigned for followup to a Deputy Dylan. It was
02:30:48 lead number forty-four. I have not seen any lead where
02:30:53 that was actually ever done, whether -- and if it was,
02:30:56 what efforts were made. Was this person identified.
02:30:59 It doesn't appear that that happened. If it did, I
02:31:03 don't have that information. Now, the interesting part
02:31:06 of all of this is the fact that Michael Bohrer never
02:31:13 mentioned his brother being anywhere near Mason Road.
02:31:17 When I spoke to his brother, he actually indicated that
02:31:20 he was living with his brother when his brother was
02:31:23 renting the house on Mason Road.

02:31:26 THE COURT: You'd agree that you have gotten
02:31:29 several different stories from John Bohrer at this
02:31:31 point, correct?

02:31:33 MS. PEEBLES: Yeah, and when I have
02:31:34 information to confirm for example the traffic ticket
02:31:38 where he was pulled over driving a green Ford vehicle
02:31:41 and towed, he was dropped off at the corner of Route
02:31:43 106 an 104B. That's where Spinners hotel is, the exact
02:31:47 location. That was -- and he indicated that he had
02:31:50 been here for a nine-month period of time prior to
02:31:53 being pulled over, and he couldn't remember his
02:31:55 address. Mason Road where Michael Bohrer lived at the
02:31:58 time is right around the corner from Spinners. It's

02:32:01 literally less than two miles from the D & W during
02:32:04 that relevant time period, so the fact that that was
02:32:09 not ever disclosed until very recently I think, Your
02:32:14 Honor, speaks volumes as to something that's --

02:32:17 THE COURT: The bottom line though, Ms.
02:32:18 Peebles, how do we get past the evidentiary rule that
02:32:22 says that you are not allowed to impeach your own
02:32:24 witness? You call Mr. Bohrer as your witness, correct?

02:32:27 MS. PEEBLES: Judge, I'm not impeaching Mr.
02:32:28 Bohrer.

02:32:28 THE COURT: You're not, not going to be
02:32:31 impeaching his testimony with his brother's or Ms.
02:32:36 Schmitt, I apologize, Schmitt, right?

02:32:38 MS. PEEBLES: Schmitt.

02:32:39 THE COURT: Schmitt, okay. What's the point
02:32:41 of calling him?

02:32:42 MS. PEEBLES: I never even -- he never denied
02:32:44 it because I never had an opportunity to ask him so I
02:32:46 wouldn't be impeaching him.

02:32:47 THE COURT: Oh, yes, you will be attacking
02:32:49 your own witness's credibility.

02:32:51 MS. PEEBLES: Judge, I am bringing forth facts
02:32:52 from people that have firsthand knowledge and
02:32:54 information that's relevant to the case.

02:32:56 THE COURT: But should you call them on your

02:32:57 direct case instead of calling Mr. Bohrer then?

02:33:01 MS. PEEBLES: Pardon me?

02:33:02 THE COURT: Wouldn't have made more sense to 02:33:04 call these people on your direct and not call Mr. 02:33:06 Bohrer?

02:33:07 MS. PEEBLES: I didn't know John Bohrer 02:33:10 existed. I had no idea. I asked Mr. Bohrer about his 02:33:13 family. I didn't know if -- he wouldn't disclose 02:33:14 anything about his family, that's why I made a motion 02:33:16 early on to the Court, and I said is there anyone who 02:33:18 is going to investigate whether this man actually has 02:33:20 two daughters, and I was told that my expense, I could 02:33:23 investigate that on my own which I -- I made every 02:33:26 effort to do, Judge, so I have gone --

02:33:30 THE COURT: You in the moving papers say it's 02:33:33 relevant to debunk his claim that he's incapable of 02:33:38 committing such an act. Isn't that impeachment of your 02:33:40 own witness?

02:33:40 MS. PEEBLES: Judge, if you listen to the CD 02:33:42 which is in evidence, which is the Exhibit 55 which is 02:33:45 in evidence, he's telling the investigators, he's 02:33:48 telling them that he does not have it in him and could 02:33:52 not possibly have done this. Unfortunately, the 02:33:54 investigators were at a disadvantage when they were 02:33:57 questioning him because they didn't realize he had this

02:33:59 prior kidnapping or attempted kidnapping out of
02:34:02 Milwaukee.

02:34:03 THE COURT: Milwaukee.

02:34:04 MS. PEEBLES: Had they known it, I think the
02:34:07 interview would have been much different and we -- we
02:34:09 might not even be here today.

02:34:10 THE COURT: Mr. Oakes or Mr. Moody?

02:34:12 MR. OAKES: Thank you. Your Honor, it appears
02:34:17 that a large part of the area that defense counsel
02:34:19 wants to explore with either Michael Bohrer or John
02:34:24 Bohrer is regarding the 1981 abduction of Catherine
02:34:29 Schmitt, the crime for which John Bohrer apparently had
02:34:32 the charges dismissed. I don't know what the
02:34:34 circumstances were as to why it ended in a dismissal
02:34:38 for him, but in the motion papers, the defense counsel
02:34:43 cites the fact that Mr. Bohrer, either one or both,
02:34:47 lived in Beacon City around the area of 1990 and may
02:34:51 have been involved in selling marijuana or dealing
02:34:54 marijuana at that time. Really it's collateral to the
02:34:58 issues at hand here, and what they were doing in 1990
02:35:02 at Beacon, whether they were or were not selling
02:35:04 marijuana, has no bearing upon this case in the events
02:35:08 of 1994.

02:35:10 She -- the defense has offered traffic ticket
02:35:13 from 1992 to show that John Bohrer was in Oswego County

02:35:18 at that time. It appears he very -- may very well have 02:35:21 been in Oswego County, but again, that's two years 02:35:25 prior to the abduction, and the fact that the man was 02:35:28 in the county two years prior to Heidi Allen's 02:35:31 abduction quite frankly is of no moment or consequence 02:35:34 to the ultimate issues in this case. There has been no 02:35:38 testimony that John Bohrer was spotted around or near 02:35:42 the D & W, that he had any contact with Heidi Allen, 02:35:46 that he had any animus with Heidi Allen, and again, 02:35:51 even to go down the road with the drug angle, there's 02:35:53 no testimony that John Bohrer was in any way dealing 02:35:56 marijuana in 1994 or was dealing here in Oswego County.

02:36:02 Defense points to page eight of the leads 02:36:07 report where they talk about a Mr. Baureax, and again, 02:36:11 in the report it's spelled B-A-U-R-E-A-X, and the fact 02:36:18 that defense not found a person by the name of John 02:36:21 Baureax with that spelling doesn't mean that one did 02:36:25 not exist at that time, nor does it mean that there was 02:36:28 a mistake, that this is what they actually intended to 02:36:34 mean John Bohrer, the person she's now pointing to. 02:36:37 Quite frankly, I think it takes quite a leap to assume 02:36:39 that there must have been a typo and it must have been 02:36:41 John Bohrer. It really gets speculative, there's 02:36:45 nothing directly connecting, particularly since, quite 02:36:48 frankly, when we looked at the witness list originally

02:36:52 submitted by the defense, there was a Michael Bort, 02:36:56 B-O-R-T. We presumed they meant Michael Bohrer. Well, 02:37:00 it turns out there actually is a Michael Bort, B-O-R-T, 02:37:04 it wasn't a misspelling, and again, so I think based on 02:37:07 that experience, it is quite a leap to assume that 02:37:11 there was a misspelling in the report or that they're 02:37:14 actually referring to John Bohrer. And as -- Ms. 02:37:23 Peebles, are you seeking to call both John Bohrer and 02:37:26 Michael Bohrer?

02:37:28 MS. PEEBLES: I never said I was calling 02:37:29 Michael Bohrer, I was asking for permission to call 02:37:32 John Bohrer.

02:37:32 MR. OAKES: Okay, and you said about renewing 02:37:36 the motion, I didn't know if you were renewing the 02:37:38 motion to recall Michael Bohrer.

02:37:39 THE COURT: I think part of the first motion 02:37:40 Ms. Peebles made --

02:37:41 MS. PEEBLES: Right, the first part of it 02:37:43 was --

02:37:43 THE COURT: First was to re-subpoena Michael 02:37:47 Bohrer.

02:37:47 MS. PEEBLES: Right, and that was in 02:37:48 connection with the prior act, but I didn't know that 02:37:50 John Bohrer was living in this area.

02:37:51 THE COURT: I didn't interpret your most

02:37:52 recent motion as your request to also bring back
02:37:55 Michael Bohrer.

02:37:56 MS. PEEBLES: No.

02:37:56 THE COURT: Does that clarify it, Mr. Oakes?

02:37:58 MR. OAKES: It does, thank you. So just as it
02:38:01 relates to John Bohrer, again, there has been no
02:38:03 evidence or no testimony to connect John Bohrer.
02:38:06 Despite the twenty-nine witnesses the defense has
02:38:10 called so far in this case, there's been no testimony
02:38:13 from anybody as having seen John Bohrer, that John
02:38:17 Bohrer was associating with Roger Breckenridge or James
02:38:21 Steen, that John Bohrer was in the area at the time.
02:38:25 Quite frankly, I just think it's a reach at this point,
02:38:28 Your Honor.

02:38:30 MS. PEEBLES: Judge, I just want to point out
02:38:32 that when I asked Mr. John Bohrer whether he knew Mr.
02:38:37 Steen, he described him immediately and said he knew a
02:38:39 guy named Thumper, he was hanging out in the bars in
02:38:42 Mexico, so he knew who he was and was familiar with him
02:38:45 and was able to provide a description.

02:38:48 MR. OAKES: And again, I guess part of what I
02:38:51 don't understand, Your Honor, is I understand the most
02:38:54 recent defense argument because I mean the argument's
02:38:58 changed --

02:38:58 THE COURT: The one here.

02:38:59 MR. OAKES: Well --

02:38:59 THE COURT: Or the one last week.

02:39:01 MR. OAKES: Overall, Your Honor, because
02:39:02 initially the accusation was that Bohrer, Breckenridge
02:39:07 and Steen all went to the D & W as that theory is put
02:39:14 through through Tonya Priest. Through Mr. Pierce's
02:39:19 testimony, it appears the defense theory was that James
02:39:23 Steen was there with one other male, not two other
02:39:27 males, but that James Steen was there at the D & W and
02:39:30 grabbed Heidi Allen from behind with another male, that
02:39:33 the defense was, as I understand it, arguing must have
02:39:38 been Michael Bohrer. There's no testimony of a third
02:39:41 person being involved there, John Bohrer --

02:39:45 THE COURT: How do you address Ms. Peebles'
02:39:47 Molineux argument? How do you address Ms. Peebles
02:39:50 Molineux argument, Ms. Peebles' interpretation of
02:39:54 Molineux? What's your position on Molineux?

02:39:56 MR. OAKES: Well, I believe the Court did
02:39:58 correctly interpret it, and that's what the People had
02:40:00 argued in our initial response. Again, in the cases
02:40:03 that I provided to the Court today, and I'm not going
02:40:05 to go through all of the cites, I've given them to the
02:40:09 Court and to counsel, to introduce evidence of third
02:40:15 party culpability, there generally needs to show some
02:40:17 connection to the particular crime that's at hand. To

02:40:20 take an example, if the defendant's on trial for a
02:40:23 burglary, it would be very easy for that defendant to
02:40:27 look in the community of like other people who have
02:40:30 been convicted of burglaries. Again, most household
02:40:33 burglaries are probably committed in a very similar
02:40:35 fashion, so a defendant can point to any number of home
02:40:38 invasion burglars and say it must have been that
02:40:41 person. There needs to be some particular connection
02:40:44 to show John Bohrer is related to this case, or Michael
02:40:49 Bohrer, and again, I don't believe the facts are so
02:40:52 unique or that the crime in Milwaukee was committed in
02:40:57 such a unique fashion as that it had to be the same
02:41:00 people who committed the abduction of Heidi Allen.

02:41:02 THE COURT: Okay, the Court will give you a
02:41:04 written decision to the parties, I'm sorry, to the
02:41:06 sides, by Friday of this week.

02:41:07 MS. PEEBLES: Judge, can I just comment on one
02:41:09 thing?

02:41:09 THE COURT: Sure.

02:41:11 MS. PEEBLES: As far as the example that Mr.
02:41:12 Oakes provides with regard to a burglary, if this were
02:41:14 a burglary case I would completely agree him that there
02:41:17 would have to be some unique characterization that
02:41:20 would distinguish it from your average burglary, but in
02:41:23 a case where we're talking about an abduction of a

02:41:24 random female in a parking lot, I don't think that it gets any more unusual or extraordinary in a case such as that, and what I've brought forward in my motion is a statement by John Bohrer who suggested to me when I spoke with him that there perhaps is somebody else out there in the New York area who was, quote, "deformed or suffered front some type of muscular dystrophy," and because he realized during our conversation I had no idea what he was talking about, he then said he couldn't remember. So Judge, I think this is really an unusual situation and it's -- it's simply not -- you cannot equate it to run-of-the-mill burglary or robbery.

02:42:01 THE COURT: Ms. Peebles, let's go back to Mr. Bohrer's bouncing all over the place with his stories and questions, stories and answers.

MS. PEEBLES: Right.

02:42:08 THE COURT: Doesn't that kind of undermine his credibility in all respects? In terms of maybe he's answering questions just to make you happy. I mean he doesn't seem to have any consistency whatsoever in anything that he has said to you. Now you say when I produce evidence he changes his mind. Well, he changes his mind because maybe he thinks he should. Where is this, if we put this person on the stand, does he have

02:42:31 any credibility coming in?

02:42:34 MS. PEEBLES: I guess then, Judge, it's a 02:42:35 question for the fact-finder. If I -- if I'm eliciting 02:42:38 questions and he's -- he's -- if he's responding to my 02:42:40 questions, then it would be a situation for the 02:42:43 fact-finder to say is he being truthful. I can't vouch 02:42:47 for the people I put up there if I don't know, but if I 02:42:50 have proof and a good faith basis to ask the question, 02:42:53 then I think then that's a matter of weight for the 02:42:55 Court to decide.

02:42:56 THE COURT: Okay.

02:42:57 MS. PEEBLES: But -- but I guess that's my 02:42:59 position with that.

02:43:00 THE COURT: The Court's going to give a 02:43:01 written decision by this Friday the tenth, okay, so 02:43:03 we -- hold on just a second, we have an agreement 02:43:05 regarding the knife, right?

02:43:07 MS. PEEBLES: What's the knife? I'm sorry.

02:43:08 THE COURT: The knife, the DNA.

02:43:10 MS. PEEBLES: Oh, yeah, yeah.

02:43:11 THE COURT: If the Court sides with Ms. 02:43:13 Peebles, we'll have a subsequent date to come down to 02:43:16 testify, okay. If not, the Court -- do we want to set 02:43:20 time now for submission of memorandums? How do we want 02:43:26 to do this?

02:43:26 MS. PEEBLES: Judge, there was just one other thing I wanted to raise. During our questioning of Brian Mensch, we were prohibited from eliciting information about whether he was told by VanPatten about information concerning a female informant in New Haven.

02:43:43 THE COURT: Okay.

02:43:44 MS. PEEBLES: The prosecution then elicited they were able to deny information that we weren't even able to elicit on direct. They were allowed to ask VanPatten whether he ever told Brian Mensch that he had a female informant in the New Haven area, and with that, I would ask that I be able to call Brian Mensch to testify.

02:44:04 THE COURT: For one question? For one series of questions?

02:44:07 MS. PEEBLES: Well, unless the Court accepts my proffer, something he would say under oath without the benefit of cross-examination, I would be fine with that.

02:44:14 THE COURT: Then it becomes a credibility issue between Mensch and VanPatten, right?

02:44:19 MS. PEEBLES: Right.

02:44:19 THE COURT: Mr. Oakes?

02:44:20 MR. OAKES: Can I have a moment, Your Honor?

02:44:22 THE COURT: Sure. Depends on what Mr.
02:44:28 VanPatten said versus what Mr. Mensch said.

02:44:31 MS. PEEBLES: Well, what I proffer that he
02:44:34 would say.

02:44:34 THE COURT: Correct. The witness is here.
02:44:48 What's his name again? Moskal?

02:44:51 MS. PEEBLES: Moskal.

02:44:56 THE COURT: Do you want to get a sworn
02:45:22 statement from him? Would that make you feel better?

02:45:24 MS. PEEBLES: Actually he has it on audio.
02:45:28 You interviewed him and you know what he is going to
02:45:31 say based on the audio when he was here to testify.

02:45:34 THE COURT: There's not a jury.

02:45:35 MR. OAKES: No, no, no, and I understand that,
02:45:37 Your Honor. So the proffer that he would say that
02:45:40 VanPatten told him that he had a female CI working for
02:45:44 him.

02:45:45 MS. PEEBLES: In New Haven, and then wham,
02:45:47 Heidi Allen disappeared.

02:45:48 THE COURT: And then you have your witness who
02:45:50 said he never disclosed that to Mr. Mensch, Mensch?

02:45:54 MS. PEEBLES: Mensch.

02:45:55 THE COURT: It's a credibility issue.

02:45:57 MR. OAKES: It is a credibility issue, Your
02:45:58 Honor. We would agree to that stipulation. I guess

02:46:01 part of my concern though is just the relevancy. I mean it's a leap --

02:46:06 THE COURT: I see relevancy. The question is Ms. Peebles referenced an audio tape of the interview?

02:46:12 MR. OAKES: There was an interview of Brian Mensch by the Oswego County Sheriff's Department.

02:46:17 THE COURT: Okay.

02:46:18 MS. PEEBLES: And he said that we could offer that.

02:46:20 THE COURT: I was going to say why don't I listen to that.

02:46:23 MS. PEEBLES: That's fine, why don't we offer that, Judge. I don't have it marked but I will provide it to the Court and mark it as an exhibit.

02:46:29 THE COURT: Again, there's no jury.

02:46:31 MR. OAKES: Yeah, and just on that limited issue, because at one point during the interview with Mr. Mensch --

02:46:36 THE COURT: It will be introduced to the limited issue of whether or not Brian Mensch said to -- I'm sorry, VanPatten said to Mensch, "I have a female CI in New Haven." That's it. It comes down to credibility.

02:46:49 MR. OAKES: Introduce the CD for that issue, that's fine.

02:46:51 THE COURT: That's it, right?

02:46:52 MS. PEEBLES: Yes.

02:46:53 THE COURT: Do you have the CD?

02:46:54 MR. MOODY: I didn't bring it with me, Judge.

02:46:57 MS. PEEBLES: I actually think we have a copy
02:46:59 of it here and I'll mark it and then give it to the
02:47:02 Court.

02:47:02 THE COURT: That's fine.

02:47:03 MR. OAKES: That's fine.

02:47:03 THE COURT: On stip, right?

02:47:04 MR. OAKES: Yes.

02:47:05 MR. MOODY: Sure.

02:47:05 THE COURT: It would be different if we had a
02:47:08 jury but we don't have a jury.

02:47:09 MR. OAKES: I want to make sure it's being
02:47:11 received for that limited issue.

02:47:12 THE COURT: Very limited issue, credibility
02:47:14 issue between VanPatten and Mensch.

02:47:17 MR. OAKES: Because I once agreed to something
02:47:20 else.

02:47:20 THE COURT: You didn't limit it, Mr. Oakes.
02:47:23 Okay, so remind me why we're calling Mr. Moskal?

02:47:27 MS. PEEBLES: Judge, we were just provided
02:47:29 with these punch cards recently and I had a question
02:47:32 concerning some of the codes on them.

02:47:34 THE COURT: Okay. Now, who do you want Mr. Moskal to be called by, you or by you?

02:47:40 MR. OAKES: For the defense, that's fine.

02:47:41 THE COURT: Then he gets to cross-examine, right? Mr. Moskal, bring him in. So Mr. Oakes, you are consenting to having Ms. Peebles introduce another witness although she has at one point indicated she was done calling witnesses for your direct, not for your rebuttal issue, right?

02:47:57 MR. OAKES: Yes, that's fine.

02:48:02 THE COURT: This gentleman's first name is what?

02:48:05 MR. MOODY: Robert.

02:48:17 THE CLERK: Raise your right hand, put your left on the Bible.

02:48:24 ROBERT MOSKAL, Called as a witness, having been duly sworn, was examined and testified as follows:

02:48:29 THE CLERK: Please state your name for the record.

02:48:32 THE WITNESS: Robert Moskal.

02:48:34 THE CLERK: Spell your last name.

02:48:36 THE WITNESS: M-O-S-K-A-L.

02:48:39 THE COURT: Mr. Moskal, before you entertain any other questions, I'm going to ask you a question, and that is do you consent to having your testimony

02:48:46 video or audio taped?

02:48:48 THE WITNESS: I'd prefer not.

02:48:50 THE COURT: No consent. Ms. Peebles, can you
02:48:51 just give me a second? Mr. Lyndaker, come here for a
02:48:55 second please.

02:48:56 (Whereupon, there was a pause in the
02:49:03 proceeding.)

02:49:03 THE COURT: Ms. Peebles, your witness.

02:49:05 DIRECT EXAMINATION

02:49:06 BY MS. PEEBLES:

02:49:07 **Q.** You're a lieutenant with the Sheriff's Department?

02:49:11 **A.** I am.

02:49:12 **Q.** Lieutenant, were you recently asked to gather up
02:49:15 some punch cards from the storage area?

02:49:17 **A.** Yes, I was.

02:49:18 **Q.** I'm going to hand you what's been marked as Defense
02:49:21 Exhibit 167 through 170 and ask if you can identify these
02:49:28 exhibits for me.

02:49:30 THE COURT: Ms. Peebles, you might want to put
02:49:32 the mike on. Who has the mike?

02:49:34 MS. PEEBLES: I have it.

02:49:37 (Whereupon, there was a pause in the
02:49:44 proceeding.)

02:49:44 **A.** Yes, they appear to be.

02:49:45 **Q.** Are these the punch cards?

02:49:47 A. Copies of punch cards.

02:49:48 Q. Those punch cards were contained in a storage area in the Sheriff's Department?

02:49:55 A. That's correct.

02:49:55 Q. And as far as you know, you took the originals out of the storage area just very recently?

02:50:03 A. Yes, we did.

02:50:04 Q. And you were asked to go through and find any punch cards relating to the D & W or Heidi Allen?

02:50:11 A. That's correct.

02:50:11 Q. Or the general area?

02:50:13 A. Or the general area.

02:50:13 Q. Okay, and taking a look at 167, top one there.

02:50:22 A. Yes.

02:50:22 MS. PEEBLES: At this time, Judge, I'd like to move 167 through 170 into evidence.

02:50:28 THE COURT: Did he prepare these punch cards I guess is the best question.

02:50:32 Q. Well, I take it you weren't the one who created those punch cards.

02:50:37 A. I did not create these punch cards.

02:50:39 Q. You just retrieved them.

02:50:39 A. That's correct.

02:50:40 Q. Basically. And as far as you know, they weren't

02:50:43 part of the original Sheriff's investigative file in

02:50:46 connection with the Heidi Allen case?
02:50:48 **A.** That's correct.
02:50:50 THE COURT: Mr. Oakes?
02:50:51 MR. OAKES: Can I look at the exhibits, Your
02:50:54 Honor?
02:50:54 THE COURT: Yeah.
02:51:02 **Q.** While he's looking at the exhibits, I thought I'd
02:51:05 ask a question about whether he's familiar, lieutenant,
02:51:08 with regard to the codes that are used on punch cards?
02:51:13 **A.** No, I'm not with that time frame. That was before I
02:51:16 was hired.
02:51:17 **Q.** You joined the department in 1997?
02:51:19 **A.** That's correct.
02:51:20 **Q.** So did the codes change between the time of 1994 and
02:51:25 1997?
02:51:27 **A.** 911 center took over and they stopped dispatching by
02:51:33 codes. They used plain language.
02:51:35 **Q.** By 1997?
02:51:37 **A.** That's correct.
02:51:37 **Q.** So if you are looking at those punch cards and there
02:51:40 are numbers on them or codes, you wouldn't be able to tell
02:51:42 exactly what the call in was for?
02:51:44 **A.** I could not based solely on the code.
02:51:47 **Q.** And you found a series of punch cards that pertained
02:51:54 to either Heidi Allen or the D & W?

02:51:58 **A.** Yes.

02:51:58 **Q.** And those punch cards contained information
02:52:02 concerning incidents or calls in?

02:52:05 **A.** The general vicinity or at the convenience store.

02:52:11 **Q.** And the time period in which those calls were made
02:52:13 were before you worked there, they were between 1992 and
02:52:17 1993, that general time frame?

02:52:19 **A.** That's correct.

02:52:26 MS. PEEBLES: Nothing further. I'm not going
02:52:27 to offer them.

02:52:28 THE COURT: You're not going to offer them?
02:52:29 Okay. Mr. Oakes or Mr. Moody, any cross?

02:52:41 MR. OAKES: Actually no questions, Your Honor.

02:52:43 THE COURT: Sir, you can step down. Thank
02:52:45 you. Okay, I know I addressed it, but I don't know if
02:52:54 I had an answer with regard to submission of motions,
02:52:57 not motions --

02:52:58 MS. PEEBLES: Oh, I see, yes, the time frame.

02:52:59 THE COURT: Do we want a month, do we want to
02:53:02 wait for the knife to come back? What are we looking
02:53:04 at, guys?

02:53:06 MS. PEEBLES: Well, I think we should probably
02:53:08 wait for the knife to come back, but I don't think it
02:53:09 will take terribly long because they tested a shovel,
02:53:12 that didn't take them that long. Can we expedite

02:53:15 somehow with a court order?

02:53:16 MR. OAKES: I -- I don't know.

02:53:18 THE COURT: Usually much more -- they return
02:53:21 much more rapidly if they know there is a proceeding
02:53:24 pending; otherwise, yeah, we'll get to it when we get
02:53:27 to it.

02:53:28 MR. OAKES: I know in December we had
02:53:29 submitted some items and it took us until January
02:53:32 thirtieth I think thereabouts to get a response so
02:53:36 roughly a month, five weeks to get the response.

02:53:38 THE COURT: Can you tell them the Court would
02:53:40 really like them expedited like tomorrow if possible?
02:53:43 You know what I'm saying?

02:53:45 MR. OAKES: I understand what you're saying
02:53:47 because in that case what they do first is a serology
02:53:49 test which is to see if there's any --

02:53:51 THE COURT: I understand.

02:53:52 MR. OAKES: -- human blood or anything there,
02:53:54 but then when the DNA, it does take a matter of at
02:53:57 least weeks, at least a few weeks because there is
02:54:00 levels of administrative review.

02:54:02 THE COURT: That's fine, I just want -- I just
02:54:03 want them -- I want the lab, the lab to realize that we
02:54:09 are -- there's a crunch. We want these back sooner
02:54:13 rather than later. We don't want them put to the side.

02:54:16 MR. OAKES: And I can speak with Julie Pizaketti (ph), the director of the lab. I think we should be able to reasonably get them back in a month, thirty days, give or take. I don't think they can do it much quicker than that though, Your Honor.

02:54:28 THE COURT: That's fine as long as they do it quickly as they can.

02:54:31 MR. OAKES: Yes.

02:54:31 THE COURT: Hold on, Ms. Peebles. So officially we are in recess, okay, because there's -- there may be a piece of evidence yet to come in, and there's no decision on the motion from the Court yet. So we are in recess. The Court will issue a decision on the motion made by Ms. Peebles today. I will give it -- I'll issue it by the tenth. I'll have to fax it to everybody. Is that agreeable to everybody?

02:54:52 MS. PEEBLES: The tenth, this Friday, Judge?

02:54:54 THE COURT: Yes.

02:54:55 MS. PEEBLES: Yeah.

02:54:56 THE COURT: If for some reason it can't get done, it will be soon after the tenth. So we're in recess at this time.

02:55:02 MS. PEEBLES: The only other request I would make is if on the way back today maybe we could look at the knife if we're heading back.

02:55:08 MR. OAKES: I have no objection.

02:55:09 THE COURT: Assuming there is no objection to
02:55:11 that.

02:55:11 MR. OAKES: I have no objection to that, Your
02:55:13 Honor. Again, presuming -- can you give a call over
02:55:18 there, Dale MacDonald's the evidence custodian, I just
02:55:21 need to make sure he's still there, but I have no
02:55:23 problem with that, we can review it, and then I presume
02:55:25 the lab will be open tomorrow, talk to the sheriffs
02:55:28 about having somebody drive it there tomorrow.

02:55:30 THE COURT: I would agree with Ms. Peebles,
02:55:32 let's not set a time frame for the submission of
02:55:35 memorandum, okay? Okay.

02:55:38 MR. OAKES: Okay.

02:55:38 THE COURT: So we are officially in recess. I
02:55:41 don't have a return date yet. Thank you.

(Conclusion of Proceeding).

* * *

CERTIFICATE

I, JENNIFER ADYDAN, an Official Court Reporter in and for the State of New York, Fifth Judicial District, do hereby certify that the foregoing is a true, complete and accurate transcript of my stenographic notes taken in the above-entitled matter and the whole thereof to the best of my ability.

Jennifer Adydan

Jennifer Adydan
Official Court Reporter

DATED: April 15, 2015